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Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA

ARRON STANFIELD, as an individual
and on behalf of all others similarly
situated,

Plaintiffs,

vs.

THE F.A. BARTLETT TREE EXPERT
COMPANY, a Connecticut corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: SCV-265929

[Assigned for all purposes to the Honorable Patrick
Broderick, Dept. 16]

**DECLARATION OF KRISTEN M. AGNEW IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: TBD
Time: TBD
Dept.: 16

Complaint Filed: January 28, 2020
Trial Date: None Set

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I, Kristen Agnew, declare as follows:

1. I am an attorney at law, duly licensed to practice before all Courts in the State of California, and am with the law firm Diversity Law Group, P.C., counsel of record for Plaintiff Arron Stanfield (“Plaintiff”). I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

PROCEDURAL HISTORY

2. From the inception of the case, Class Counsel has zealously represented the interests of the Class. The proposed settlement was obtained for the benefit of the Class, not for the individual Plaintiff.

3. On January 8, 2020, Plaintiff submitted his written notice under Labor Code section 2699.3 (the “PAGA Notice”) to the LWDA and Defendant. As set forth in the PAGA Notice, Plaintiff alleges that Defendant failed to adhere to Labor Code section 226(a)’s mandate that employers identify all applicable hourly rates in effect during the pay period on the wage statements issued to hourly employees. More specifically, Plaintiff alleges that, when overtime wages were paid, Defendant’s wage statements did not identify the overtime rate as 1.5 times the regular rate of pay. Rather, Plaintiff alleges that the wage statements only identified the base rate of pay.

4. On January 28, 2020, Plaintiff filed the Complaint in this Action in the Sonoma County Superior Court. The Complaint alleges class and representative PAGA claims for violation of Labor Code section 226(a), and violation of California Labor Code section 2698, *et seq.*, based on the facts described in Plaintiff's PAGA Notice. Plaintiff seeks statutory and civil penalties under the California Labor Code and the PAGA, as well as attorneys' fees and costs.

5. On May 19, 2020, defense counsel informed me that the class and representative PAGA claims asserted by Plaintiff in the lawsuit are precluded by a recent class action settlement in the matter of *Omar Magna v. The F.A. Bartlett Tree Expert Company, Inc.* United States District Court for the Northern District of California Case No. 17-cv-06113-RS. In connection with conferring on this issue, I reviewed relevant documents in *Magna*, including the

operative complaint, settlement agreement, class notice and judgment. The plaintiff in *Magna* pursued class and representative PAGA claims predicated on Defendant's alleged failure to: (1) pay overtime wages at the legal overtime rate; (2) provide second meal periods when employees worked over 10 hours in a workday; (3) provide rest periods; (4) provide accurate wage statements; and (5) timely pay final wages.

6. On April 3, 2020, the district court entered a Judgment and Order Granting Plaintiff's Motion for Final Approval of Class Action Settlement in the *Magna* action. As relevant to the instant motion for preliminary approval, the court approved settlement released Defendant from claims arising under Labor Code section 226(a) during the period of August 3, 2013 to March 31, 2019. The *Magna* settlement binds all "current or former hourly non-exempt employees employed by [The F.A. Bartlett Tree Expert Company] in California during the Class Period [August 3, 2013 to March 31, 2019]."

7. In light of the substantial overlap that exists between Plaintiff's lawsuit and the *Magna* settlement, the Parties agreed to redirect their resource to exploring the possibility of an early settlement.

MEDIATION

8. On May 19, 2020, the Parties agreed to attempt to resolve this matter through private mediation. The Parties engaged in informal discovery in order for Class Counsel to assess the claims, as well as analyze the maximum exposure of damages and penalties. Defendant provided my office with informal data and information pertaining to the putative class size, the number of aggrieved employees, the number of wage statements at issue, and information regarding Defendant's wage statement policies and practices.

9. On June 26, 2020, the Parties participated in an all-day mediation session with neutral Tripper Ortman, a well-regarded neutral with experience mediating employment matters. During the mediation, counsel zealously advocated on behalf of their respective clients. The Parties gained valuable insight and exchanged significant information about their respective positions.

10. Defendant argued that Plaintiff would be unable to establish class-wide injury.

1 Defendant heavily relied on the recent decision in *Raines v. Coastal Pacific Food Distributors* to
2 argue that the omission of the correct overtime hourly rate from a wage statement cannot give
3 rise to liability where the rate can be “promptly and easily” determined by simple arithmetic. As
4 argued by Defendant, employee could determine the overtime rate from the four corners of the
5 wage statement; no additional documents or information are necessary.

6 11. Defendant further argued that Plaintiff would be unable to establish a “knowing
7 and intentional” violation of Labor Code section 226(a). Defendant maintains that it acted in
8 good faith and should not be subject to penalties for a “technical” violation. In this respect,
9 Defendant noted that it voluntarily modified its wages statements to ensure compliance with
10 Labor Code section 226(a). For wage statements issued on or after October 4, 2019, the wage
11 statements include the overtime rate. Plaintiff’s wage statements corroborate this correction.

12 12. Defendant also maintained that maximum liability exposure is unrealistically high
13 and subject to significant reduction.

14 13. After a full day of negotiation, the Parties were able to reach an agreement for
15 settlement and the key terms. In light of the *Magna* settlement agreement and the fact that
16 Defendant corrected its wage statements as of October 3, 2019, the Parties agreed to limit the
17 Class Period and Release Period to April 1, 2019 through October 3, 2019.

18 **SUMMARY OF THE MONETARY TERMS OF THE SETTLEMENT**

19 14. The material terms of the settlement are memorialized in the Joint Stipulation of
20 Class and Representative Action Settlement (“Joint Stipulation” or “Settlement Agreement”).
21 Attached hereto as **Exhibit 1** is a true and correct copy of the Settlement Agreement.

22 15. As defined by the Settlement Agreement, the proposed Class consists of “all
23 current or former non-exempt employees of Defendant in the State of California who were paid
24 overtime wages during the Class Period [April 1, 2019 through October 3, 2019]. Joint Stip. § I-
25 3. Defendant has represented that there are approximately 148 individuals who comprise the
26 Class. Based upon Defendant’s records, Class Members received 2,135 wage statements
27 reflecting the payment overtime wages during the Class Period. Joint Stip. § III-A-39.

28 16. The Settlement Agreement provides for the Gross Settlement Amount of Two

1 Hundred Twenty-Two Thousand Five Hundred Dollars (\$222,500.00). Joint Stip. § I-14. The
2 balance of the Gross Settlement amount remaining after deduction of the approved Enhancement
3 Payment, the LWDA's portion of the PAGA Payment, Settlement Administration Costs and
4 Class Counsel Award is the "Net Settlement Amount." The Net Settlement Amount will be
5 available for distribution to Class Members who do not timely opt-out of the Class. Joint Stip. §
6 I-17.

7 17. The Individual Settlement Payments to Class Members will be proportionally
8 based upon the number of pay periods in which the employee received a qualifying wage
9 statement (i.e. a wage statement for overtime wages) during the Class Period. Joint Stip. § III-A-
10 44. This is fair, as it directly allocates greater penalties to individual Class Members who have
11 allegedly suffered greater harm.

12 18. Additionally, the Settlement Agreement allocates Ten Thousand Dollars
13 (\$10,000) of the Gross Settlement Amount to PAGA penalties. Joint Stip. § I-19. Pursuant to the
14 PAGA, 75% of this amount, i.e. the sum of Seven Thousand Five Hundred Dollars (\$7,500),
15 shall be paid to the LWDA. The remaining 25%, i.e. the sum of Two Thousand Five Hundred
16 Dollars (\$2,500), shall be distributed to Settlement Class Members.

17 19. As part of the Settlement Agreement, Defendant does not object to Plaintiff's
18 Counsel's request for attorney's fees up to thirty-three and one-third percent of the Gross
19 Settlement Amount, i.e. the sum of Seventy-Four Thousand One Hundred Sixty-Six Dollars and
20 Sixty-Six Cents (\$74,166.66), plus up to Fifteen Thousand Dollars (\$15,000.00) for
21 reimbursement of actual litigation costs, subject to the Court finally approving this Settlement.
22 Joint Stip. § I-7.

23 20. Defendant also agrees that it will not object to Plaintiff's request for an
24 Enhancement Payment of Ten Thousand Dollars (\$10,000.00). Joint Stip. § III-A-41. Both
25 Plaintiff and Class Counsel expressly acknowledge that the Court has final discretion in any fee
26 award or Class Representative Service Award. *See* Joint Stip. Joint Stip. §§ I-13, 17.

27 21. Finally, the Settlement Agreement provides for the payment of the fees and
28 expenses reasonably incurred by the Settlement Administrator. Joint Stip. I-29. The Parties have

received a quote from Simpluris, Inc. for a fee of approximately Four Thousand Dollars (\$4,000) to administer the settlement. Any portion of the Settlement Administration Costs not used or approved by the Court shall be added to the Net Settlement Amount. The Parties believe that the administration fee is reasonable and should be approved.

PAYMENTS TO CLASS MEMBERS

22. Provided that the Court approves the Class Representative Enhancement Payment (\$10,000), attorney's fees (\$74,166.66), litigation costs (\$15,000), payment to the LWDA (\$7,500) and the Settlement Administrator's costs (\$4,000), I estimate that the Net Settlement Amount will total \$111,833.34

23. Based on the number of Class Members, employees will be entitled to recover, on average, up to \$755.63 each or \$52.38 per qualifying wage statement issued during the Class Period. The amount any particular Class Member will be entitled to recover will be greater or lower than this average, depending on the number of qualifying wage statements each respective Class Member received during the Class Period and the number of opt-outs received.

24. Any individual settlement payments to Class Members that remain un-cashed within one hundred eighty (180) days of the mailing of settlement payment checks by the settlement administrator will be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code section 1500 *et. seq.* for the benefit of the Settlement Class Member. *See* Joint Stip. § III-L-70.

POTENTIAL STATUTORY AND CIVIL PENALTIES

25. Using the data provided by Defendant, I performed a comprehensive damages analysis. Defendant issued 2,135 qualifying wage statements to 148 Class Members during the Class Period. The total penalties under Labor Code section 226(e) amount to \$206,100 [(148 x \$50) + (2,135-148) x 100].

26. The penalty calculation assumes that Plaintiff will prevail both on class certification and the merits. However, Plaintiff's claims are contested. This calculation assumes that the Court would find that the Class suffered "injury" as a result of the alleged violation, and also that the violation was "knowing and intentional." As explained above, Defendant strongly

1 disputes that Plaintiff can establish either on a class-wide basis.

2 27. Based on the data provided, I also calculated potential civil penalties for
3 Plaintiff's PAGA claim. I estimated that Defendant could face civil penalties of up to a
4 maximum \$533,750, which is premised on \$250 per wage statement if Plaintiff were successful
5 at trial.

6 28. Assuming that Plaintiff prevailed on liability, under the facts of this case, I
7 appreciate the substantial risk that Defendant could present a persuasive argument to reduce the
8 amount of PAGA penalties at trial. Defendant, for example, has argued that even if the Court
9 ultimately found that the wage statements violate Labor Code section 226, the alleged violation
10 is a technical one. Defendant has also argued that the award of both statutory and civil penalties
11 for the same "technical" violation would be confiscatory. I am also aware that Courts routinely
12 award far less than the statutory maximum amount of civil penalties, even where an underlying
13 violation of the Labor Code is found. For example, just very recently, in the matter of *Magadia*
14 *v. Wal-Mart Assocs. et al.*, while the trial court imposed substantial PAGA penalties upon the
15 defendant, such amount still represented reductions of 67% and 80% of the potential PAGA
16 penalties at issue. 384 F. Supp. 3d 1058, 1069 (N.D. Cal. 2019). Similarly, in *Fleming v.*
17 *Covidien, Inc.*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011), while the plaintiff
18 ultimately prevailed in a PAGA trial predicated on a violation of Labor Code section 226(a), *i.e.*,
19 inaccurate wage statements, the Court assessed only 17% of the maximum penalties.
20 Additionally, Judge Carville of the Alameda Superior Court in the matter of *Parr v. Golden State*
21 *Overnight*, Alameda Superior Court Case No. RG12618103, assessed PAGA penalties upon
22 Defendant of approximately 7% of the total maximum penalties—again, this was only after
23 plaintiff had prevailed at trial. Thus, the \$533,750 penalty calculation does not factor in the
24 likelihood that the Court would reduce the amount of penalties at trial.

25 29. Based on the data provided by Defendant, I estimate that Defendant's maximum
26 liability exposure is approximately \$739,850. However, this number assumes that Section 226(e)
27 statutory penalties and full PAGA penalties are awarded.

28 //

1 **THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

2 30. I strongly believe that a class can be certified and that Plaintiff can prevail at trial.
3 However, after taking into account sharply disputed factual and legal issues involved in this
4 litigation, the risks attending further prosecution, and the substantial benefits to be received
5 pursuant to the compromise and settlement of the litigation, I have concluded that settlement on
6 the terms set forth in the Settlement Agreement is appropriate and in the best interests of Plaintiff
7 and the Class.

8 **ATTORNEY EXPERIENCE**

9 31. Class Counsel has a great deal of experience in wage and hour class action
10 litigation and has been approved as class counsel in a number of class actions. My co-counsel
11 and I can and will adequately represent the Class Members in this action. I have no conflicts with
12 the Class and will adequately represent the Class.

13 32. My qualifications are as follows: I was the 2003 recipient of the Spelman
14 Presidential Scholarship to Emory University School of Law. During law school, I was a summer
15 associate at the law firm of Sonnenschein, Nath and Rosenthal, and clerked with the Atlanta
16 office of the Equal Employment Opportunity Commission. I received my J.D. from Emory
17 University in 2006 and was admitted to the California Bar in December 2006. Following law
18 school, I was an associate at Sonnenschein from September 2006 to May 2009.

19 33. Since 2009, my primary area of practice has been employment litigation. I have
20 practiced law at two preeminent employment defense firms. From May 2009 to June 2011, I was
21 an associate at Ogletree, Deakins, Nash, Smoak & Stewart, P.C. I was also an associate, and then
22 senior associate, in the labor and employment practice group of Seyfarth Shaw, LLP from June
23 2011 to May 2016. At both Ogletree and Seyfarth, I represented a wide array of fortune 500
24 companies in employment litigation in both state and federal courts, as well as before
25 government agencies, including the California Department of Labor. My practice included the
26 defense of single plaintiff and multi-plaintiff lawsuits involving claims under the California Fair
27 Employment and Housing Act, the California Labor Code and the Fair Labor Standards Act. I
28 also handled a number of wage and hour class actions.

34. In June 2016, I joined Diversity Law Group, P.C. where I spend most of my time handling employment cases. I primarily represent employees.

35. I served as the lead associate on a number of wage and hour class actions, including *Martha Cardenas v. Gold's Gym*, Los Angeles County Superior Court Case No. BC445112; *Nathaniel Werner v. Crown Equipment Corporation*, Los Angeles County Superior Court Case No. BC439428; *Christopher Williams v. Allstate Insurance Co.*, Los Angeles County Superior Court Case No. BC382577; *Hwang v. Caltech*, Los Angeles County Superior Court Case No. BC464894; *Melissa Roberts v. Zale Delaware, Inc.*, Los Angeles Superior Court Case No. BC523610; *Michael Oliver v. Konica Minolta Business Solutions U.S.A., Inc.*, Santa Clara County Superior Court Case No. 114-CV-263183; *Tessa Hodge v. Zale Delaware, Inc., d/b/a Piercing Pagoda*, San Bernardino Superior Court Case No CIVVS1301632; *Warren v. Paychex, Inc.*, N.D. Cal. Case No. 3:10-cv-02006; *Tapia v. Zale Delaware Inc. et al*, S.D. Cal. Case No. 3:13-cv-01565; and *Benjamin Burgess et al v. Tesoro Refining and Marketing Company et al*, C.D. Cal. Case No. 2:10-cv-05870.

36. I have been approved as class counsel in a number of class actions by the Superior Courts of California and United States District Courts, including: *Antonio Becerra-Mata v. PSC Industrial Outsourcing, LP*, San Benito County Superior Court Case No. CU-15-00030; *Andrew Vasquez v. Earthbound Farm, LLC*, San Benito County Superior Court Case No. CU-17-00171; *Fransisco Pulido v. Westrock Services, Inc.*, San Benito County Superior Court Case No. CU-18-00074; *Kosal So v. Owens-Brockway Glass Container, Inc.*, Los Angeles County Superior Court Case No. BC608609; *John Obiols v. Lockheed Martin Corporation*, Santa Clara County Superior Court Case No. 17CV314178; *Eric Chavez v. Converse, Inc.*, N.D. Cal. Case No. 15-cv-03746-NC.; *Sarah Rodriguez v. Manpower, Inc.*, Santa Clara County Superior Court Case No. 1-16-CV-294904; *Shannon Sanchez v. American Para Professional Systems, Inc.*, Santa Clara County Superior Court Case No. 17CV306751; *Foaad Hanna v. Equinix, LLC*, Santa Clara County Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles County Superior Court Case No. BC720144; *Mary Della Maggiora v. Watsonville Community Hospital*, Santa Cruz Superior Court Case No. 18CV00191; and *Michael Randolph v. Pacific Racing*

1 *Association*, Alameda County Superior Court Case No. RG18908139.

2 37. I also second chaired two jury trials where I represented the prevailing defendant.
3 Both cases involved employees who brought claims against their former employers pursuant to
4 the Fair Employment & Housing Act. The cases are: *Jeff Cowell v. Eaton Aerospace LLC et al*,
5 Los Angeles County Superior Court Case No. BC401543; and *Richard Gulden v. Pratt &*
6 *Whitney Rocketdyne Inc. et al.*, Los Angeles County Superior Court Case No. BC468909.

7 **NOTICE TO THE LWDA**

8 38. Concurrent with the filing of the Motion for Preliminary Approval of Class
9 Action and PAGA Settlement, my office uploaded the Motion, Settlement Agreement, and
10 proposed order to the LWDA's website.

11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct.

13 Executed on this 30th day of October 2020, at Los Angeles, California.

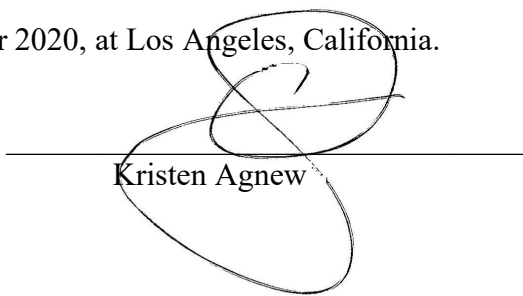
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Kristen Agnew

EXHIBIT 1

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Attorneys for Defendant The F.A. Bartlett Tree Expert Company Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SONOMA

ARRON STANFIELD, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

v.

THE F.A. BARTLETT TREE EXPERT
COMPANY, a Connecticut corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: SCV-265929

**JOINT STIPULATION OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT**

1 IT IS HEREBY STIPULATED AND AGREED by and between Defendant The F. A.
2 Bartlett Tree Expert Company, Inc. and Plaintiff Arron Stanfield on behalf of himself and each of
3 the other “Class Members,” as defined herein, subject to the approval of the Court, that the
4 settlement of the Action (as defined herein) shall be effectuated and subject to the following terms
5 and conditions:

6 **I. DEFINITIONS**

7 As used in this Joint Stipulation of Class and Representative Action Settlement, the
8 following terms shall have the meanings specified below:

- 9 1. “Action” means this lawsuit, and the Complaint in the matter entitled *Arron*
10 *Stanfield, et al. v. The F.A. Bartlett Tree Expert Company, et al.*, Superior Court for the County of
11 Sonoma, Case No. SCV-265929.
- 12 2. “Agreement” or “Settlement Agreement” means this Joint Stipulation of Class and
13 Representative Action Settlement, including any attached exhibits.
- 14 3. “Class” or “Class Member” or “Class Members” means all current or former non-
15 exempt employees of Defendant in the State of California who were paid overtime wages during the
16 Class Period (as defined herein). If such person is incompetent or deceased, “Class” or “Class
17 Member” or “Class Members” means the person’s legal guardian, executor, heir, or successor in
18 interest.
- 19 4. “Class Notice” or “Notice of Settlement” means the Notice of Proposed Class Action
20 Settlement, substantially in the form attached as Exhibit A.
- 21 5. “Class Period” means from April 1, 2019 through October 3, 2019.
- 22 6. “Class Counsel” means Larry W. Lee, Kristen M. Agnew, and Nicholas Rosenthal of
23 Diversity Law Group, P.C., 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071, and
24 William L. Marder of Polaris Law Group, LLP, 501 San Benito Street, Suite 200, Hollister, CA
25 95023.
- 26 7. “Class Counsel Award” means such award of fees and costs and expenses as the
27 Court may authorize to be paid to Class Counsel for the services they have rendered and will render
28 to Plaintiff and the Class in the Action. Defendant agrees not to oppose a Class Counsel Award of

up to one-third (1/3) of the Gross Settlement Amount, i.e. the sum of Seventy-Four Thousand One Hundred Sixty-Six Dollars and Sixty-Six Cents (\$74,166.66), and costs in the amount of up to Fifteen Thousand Dollars (\$15,000.00), subject to the Court finally approving this Settlement. It is understood by Class Counsel that the Court has final discretion in any fee award. Any portion of the Class Counsel Award not awarded to Class Counsel shall be added to the Net Settlement Amount.

8. "Class List and Data" means information regarding all Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator after Preliminary Approval of this Settlement. The Class List and Data shall be formatted as a Microsoft Office Excel spreadsheet and shall include: each Class Member's full name, employee number, most recent mailing address, Social Security Number, and the total number of Qualifying Wage Statements each Class Member received during the Class Period.

9. "Complaint" means Plaintiff's Class and Representative Action Complaint for Damages for: (1) Violation of Cal. Labor Code § 226(a), and (2) Violation of Cal. Labor Code §§ 2698, *et seq.* A copy of the Complaint is attached hereto as **Exhibit B**.

10. "Counsel for Defendant" or "Defense Counsel" means David L. Cheng of Ford & Harrison, LLP, 350 S. Grand Avenue, Suite 2300, Los Angeles, California 90071 and Daniel R. Lyman of Ford & Harrison, LLP, 1901 Harrison St., Suite 1650, Oakland California 94612.

11. "Court" means the Superior Court of California, County of Sonoma, in which the Action is currently pending, Hon. Patrick M. Broderick presiding. Court shall also mean any other Court that acquires proper jurisdiction of this Action.

12. "Effective Date" or "Effective" means ten (10) calendar days after the later of: (a) the date of entry of Order granting final approval of this Settlement, if no objection to the Settlement is filed; (b) the date on which the time for all appeals from objections to the Settlement has passed, if one or more objections to the Settlement are filed; and (c) if an appeal is taken, the date on which any reviewing court issues a decision, the time for further appeal has expired, and the trial court has regained jurisdiction.

13. "Enhancement Payment" means the amount that the Court authorizes to be paid to Plaintiff, in addition to his Individual Settlement Payment, in recognition of his efforts and risks in

1 assisting with the prosecution of the Action. Subject to the Court granting final approval, the Parties
2 agree that Plaintiff shall be paid up to Ten Thousand Dollars (\$10,000.00) from the Gross
3 Settlement Amount. It is understood by Plaintiff that the Court has final discretion in determining
4 the amount of any Enhancement Payment.

5 14. "Gross Settlement Amount" means the total amount of Two Hundred Twenty-Two
6 Thousand Five Hundred Dollars (\$222,500.00) to be paid by Defendant pursuant to the terms of this
7 Agreement within thirty (30) days after the Effective Date. The Gross Settlement Amount includes
8 all Individual Settlement Payments, the Enhancement Payment to Plaintiff, Settlement
9 Administration Costs to the Settlement Administrator, the LWDA's portion of the PAGA Payment
10 and Class Counsel Award. It is understood and agreed that Defendant's gross total liability under
11 this Settlement shall not exceed \$222,500, inclusive of attorneys' fees and costs. It is further
12 understood and agreed that Defendant shall have no obligation to pay any person, entity or
13 organization more than their gross total liability under this Settlement as set forth herein.

14 15. "Individual Settlement Payment" refers to the amount payable from the Net
15 Settlement Amount to each Settlement Class Member.

16 16. "Final Judgment" means the Final Approval Order and Judgment have been entered
17 by the Court.

18 17. "Net Settlement Amount" means the balance of the Gross Settlement Amount
19 remaining after deduction of the approved Enhancement Payment, the LWDA's portion of the
20 PAGA Payment, Settlement Administration Costs and Class Counsel Award. The entire Net
21 Settlement Amount is the maximum amount that will be available for distribution to Settlement
22 Class Members.

23 18. "Objection to Class Settlement" means any written objection to this Settlement by
24 Class Members who do not choose to be excluded from the Class that is filed, personally or through
25 an attorney, with the Settlement Administrator as specified in the Class Notice and containing all
26 the information required per Class Notice.

27 19. "PAGA Payment" means the portion of the Gross Settlement Amount that the Parties
28 have agreed will be allocated to pay in satisfaction of any claim for penalties that may be owed to

1 the California Labor and Workforce Development Agency (“LWDA”) under the Private Attorneys
2 General Act of 2004 (Cal. Lab. Code § 2698, et seq., “PAGA”) and that is released by this
3 Agreement. The amount of the PAGA Payment is subject to Court approval pursuant to California
4 Labor Code section 2699(l). The Parties have agreed that Ten Thousand Dollars (\$10,000.00) of the
5 Gross Settlement Amount shall be allocated as the PAGA Payment. Pursuant to the PAGA, 75% of
6 the PAGA Payment, i.e. the sum of Seven Thousand Five Hundred Dollars (\$7,500.00), shall be
7 paid to the LWDA, and 25% of the PAGA Payment, i.e. the sum of Two Thousand Five Hundred
8 Dollars (\$2,500.00), shall be part of the Net Settlement Amount to be distributed to Settlement
9 Class Members.

10 20. “Parties” means Plaintiff and Defendant together.

11 21. “Plaintiff” means Arron Stanfield and his respective representative(s), heir(s),
12 assign(s), attorney(s), and/or insurer(s).

13 22. “Preliminary Approval Order” is the order preliminarily approving the settlement
14 terms contained in this Agreement.

15 23. “Qualifying Wage Statement(s)” means a wage statement reflecting the payment of
16 overtime wages issued to Class Members during the Class Period, as reflected by Defendant’s
17 records.

18 24. “Released Claims” means: (a) any and all claims that could have been brought under
19 the facts and allegations made in the operative Complaint, including claims for violation of Labor
20 Code § 226, that accrued during the Class Period; and (b) any and all claims for penalties under the
21 California Private Attorneys’ General Act predicated on the violation of Labor Code § 226 based on
22 the facts as alleged in the operative Complaint that accrued during the Class Period.

23 25. “Released Claims Period” means the period from April 1, 2019 through October 3,
24 2019.

25 26. “Released Persons” means The F. A. Bartlett Tree Expert Company, Inc. and its
26 respective agents, attorneys, insurers, past, present and future divisions, members, affiliates,
27 predecessors, successors, shareholders, officers, directors, managers, employees, trustees,
28 representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents,

1 subsidiaries, privies, and/or any and all persons and/or corporate entities acting by, through, under
2 or in concert with any of them.

3 27. “Request for Exclusion” or “Opt-Out” means a timely written request by a Class
4 Member to be excluded from the Class and the Settlement. The Request for Exclusion must: (1)
5 explicitly and unambiguously state the following statement or similar statement: “I wish to exclude
6 myself from the settlement reached in the matter of *Stanfield vs. The F.A. Bartlett Tree Expert*
7 *Company, et al.* I understand by excluding myself, I will not receive any money from the
8 settlement reached in this matter”; (2) contain the name, address, and the last four digits of the
9 Social Security number of the person requesting exclusion; (3) be signed by the Class Member; and
10 (4) be postmarked or fax stamped by the Response Deadline and returned to the Settlement
11 Administrator at the specified address or fax telephone number.

12 28. “Response Deadline” means forty-five (45) days after the Settlement Administrator
13 initially mails the Notice of Proposed Class Action Settlement to Class Members, and the last date
14 on which Class Members may submit a Request for Exclusion or Notice of Objection to the
15 Settlement.

16 29. “Settlement Administration Costs” means the fees and costs incurred or charged by
17 the Settlement Administrator in connection with the execution of its duties under this Agreement
18 including: (i) fees and costs associated with preparing, issuing, and/or monitoring reports, filings
19 and notices (including the cost of printing and mailing all notices and other documents to the Class)
20 required to be prepared in the course of administering the Settlement; (ii) computing the amount of
21 the Individual Settlement Payments; (iii) handling inquiries about the calculation of Individual
22 Settlement Payments; (iv) establishing and maintaining a toll-free informational telephone support
23 line to receive Class Members’ inquiries about the Settlement; (v) preparing and submitting any
24 filings required by any governmental taxing authority or other governmental agency; and (vi)
25 mailing of postcard notifying the class members of the final approval order. The Settlement
26 Administration Costs are estimated at Four Thousand Dollars (\$4,000.00). Any portion of the
27 Settlement Administration Costs not used or approved by the Court shall be added to the Net
28 Settlement Amount.

1 30. “Settlement Administrator” refers to Simpluris, Inc., the entity that Class Counsel
2 selected to administer this Settlement and to act as the Settlement Administrator to process the
3 Settlement under the terms of this Agreement, subject to the Court’s approval.

4 31. “Settlement Class” or “Settlement Class Member(s)” means all Class Members who
5 do not a submit valid and timely Request for Exclusion.

6 **II. BACKGROUND**

7 32. On January 8, 2020, Plaintiff submitted his written notice under Labor Code section
8 2699.3 (the “PAGA Notice”) to the LWDA and Defendant. As set forth in the PAGA Notice,
9 Plaintiff alleges that Defendant failed to adhere to Labor Code section 226(a)’s mandate that
10 employers identify all applicable hourly rates in effect during the pay period on the wage statements
11 issued to hourly employees. More specifically, Plaintiff alleges that, when overtime wages were
12 paid, Defendant’s wage statements did not identify the overtime rate as 1.5 times the regular rate of
13 pay. Rather, Plaintiff alleges that the wage statements only identified the base rate of pay.

14 33. On January 28, 2020, Plaintiff filed the Complaint in this Action in the Superior
15 Court of the State of California, County of Sonoma. The Complaint alleges the following causes of
16 action: (1) Violation of Cal. Labor Code § 226(a), and (2) Violation of Cal. Labor Code §§ 2698, *et*
17 *seq.*, based on the facts described in Plaintiff’s PAGA Notice.

18 34. On May 19, 2020, the Parties agreed to participate in private mediation. In
19 connection with the mediation, Defendant produced data relating to the number of Class Members
20 and relevant wage statements issued to each Class Member, which allowed Plaintiff’s counsel to
21 conduct a full damage analysis.

22 35. On June 26, 2020, the Parties participated in private mediation with Tripper Ortman,
23 an experienced wage and hour class action mediator. After the exchange of further information and
24 extended negotiations, Plaintiff and Defendant reached the present class-wide settlement. The
25 settlement discussions were conducted at arm’s-length.

26 36. This Settlement Agreement represents a compromise and settlement of highly
27 disputed claims. Nothing in this Agreement is intended or will be construed as an admission by
28 Defendant that any of Plaintiff’s claims in the Action have merit or that it has any liability to

1 Plaintiff on those claims.

2 37. This Settlement Agreement contemplates: (i) entry of an Order preliminarily
3 approving the Settlement and approving certification of a provisional settlement class, contingent
4 upon final approval of the Settlement; (ii) the mailing of a Notice of Settlement to all Class
5 Members; (iii) the processing of any objections and Request for Exclusions received by the
6 Settlement Administrator; (iv) the processing of payments to the Class Members after final approval
7 of this Agreement by the Court; (v) entry of the Final Approval Order and Judgment granting final
8 approval of the Settlement and dismissal of the Action with prejudice; and (vi) the Settlement
9 become Effective.

10 **III. SETTLEMENT APPROVAL & IMPLEMENTATION PROCEDURE**

11 **A. Monetary Terms of Settlement**

12 38. Settlement Consideration. Defendant shall pay the sum of the Gross Settlement
13 Amount as specified in this Agreement, which shall be used to pay: (1) Individual Settlement
14 Payments, including the Settlement Class Members portion of the PAGA Payment; (2) the LWDA's
15 portion of the PAGA Payment; (3) Class Counsel Award; (4) Enhancement Payment; and (5)
16 Settlement Administration Costs. The Parties agree that this is a non-reversionary Settlement and
17 that no portion of the Gross Settlement Amount shall revert to Defendant. In no event shall
18 Defendant be required to pay more than the Gross Settlement Amount as specified in this
19 Agreement.

20 39. Calculation of Gross Settlement Amount. Based upon Defendant's records at the
21 time of the execution of this Settlement Agreement, there were approximately 2,135 Qualifying
22 Wage Statements issued to Class Members during the Class Period. If, throughout the process of
23 seeking Court approval of the instant Settlement, it is discovered that the number of applicable
24 wage statements exceeds 2,349 (i.e. 10 percent more than 2,135), Plaintiff will have the option of
25 withdrawing from the settlement.

26 40. Class Counsel Award. Defendant agrees not to oppose or impede any application or
27 motion by Class Counsel for attorneys' fees of up to one-third (1/3) of the Gross Settlement
28 Amount, i.e. the sum of Seventy-Four Thousand One Hundred Sixty-Six Dollars and Sixty-Six

Cents (\$74,166.66), and costs in the amount of up to Fifteen Thousand Dollars (\$15,000.00), which shall be paid from the Gross Settlement Amount. It is understood by Class Counsel that the Court has final discretion in any fee award. The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel reflecting the awarded attorneys' fees, costs, and expenses. Any portion of the Class Counsel Award not awarded to Class Counsel shall be added to the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement.

41. Class Representative Enhancement Payment. Defendant agrees not to oppose or impede any application or motion by Plaintiff for an Enhancement Payment of up to Ten Thousand Dollars (\$10,000.00) to Plaintiff. The Enhancement Payment shall be paid from the Gross Settlement Amount, and shall be paid in addition to Plaintiff's Individual Settlement Payment as a Settlement Class Member. It is understood by Class Counsel and Plaintiff that the Court has final discretion in any Class Representative Enhancement Payment. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff reflecting the Enhancement Payment. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on his Enhancement Payment and shall hold harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the Enhancement Award. Any portion of the Enhancement Payment not awarded to Plaintiff shall be added to the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement.

42. Settlement Administration Costs. The Settlement Administrator shall be paid for the reasonable costs of administration of the Settlement from the Gross Settlement Amount, currently estimated at Four Thousand Dollars (\$4,000.00). These costs, which shall be paid from the Gross Settlement Amount, shall include, *inter alia*, the required tax reporting on the Individual Settlement Payments, the issuing of 1099 IRS Forms, establishing a Qualified Settlement Fund, administering and distributing the Gross Settlement Amount and Class Counsel Award, and providing necessary reports and declarations. Any portion of the Settlement Administration Costs not allowed shall be added to the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement.

43. PAGA Payment. Subject to Court approval, the Parties have agreed that the amount

of Ten Thousand Dollars (\$10,000.00) of the Gross Settlement Amount shall be designated for satisfaction of claims for civil penalties under the PAGA. The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Payment, i.e. the sum of Seven Thousand Five Hundred Dollars (\$7,500.00), to the LWDA. The remaining twenty-five percent (25%), i.e. the sum of Two Thousand Five Hundred Dollars (\$2,500.00) shall be part of the Net Settlement Amount to be distributed to Settlement Class Members as per this Agreement.

44. Net Settlement Amount. The Net Settlement Amount shall be used to satisfy Individual Settlement Payments to Settlement Class Members from the Settlement Class in accordance with the terms of this Agreement. To calculate the Individual Settlement Payments, the Settlement Administrator will divide the Net Settlement Amount by the total number of Qualifying Wage Statements issued during the Class Period. That value will then be multiplied by the number of Qualifying Wage Statements each respective Class Member received during the Class Period. Settlement Class Members are entitled to 100% of the Net Settlement Amount. Defendant maintains no reversionary right to any portion of the Net Settlement Amount. If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Payments for each Settlement Class Member so that the amount actually distributed to Settlement Class Members equals 100% of the Net Settlement Amount. Payments from the Net Settlement Amount shall be made only to Settlement Class Members, pursuant to the manner provided in this Agreement.

B. Releases

45. Release of Claims by Plaintiff. As a condition to obtaining the Enhancement Payment provided for herein, Plaintiff (on behalf of himself and his spouse, heirs, executors, administrators, trustees, and/or permitted assigns) shall agree to the additional following general release of all claims, known or unknown, as follows:

(a) Plaintiff releases Defendant and all Released Parties from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violations of any state or federal statute, rule or regulation arising out of, relating to, or in connection with any

act or omission by or on the part of Defendant based on any transaction or occurrence that took place at any time prior to the date upon which this Settlement becomes Effective.

(b) Plaintiff stipulates and agrees upon the Effective Date, Plaintiff shall be deemed to 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, which 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.

(c) Accordingly, if the facts relating in any manner to this Settlement are found hereafter to be other than or different from the facts now believed to be true, the release of claims contained herein shall be effective as to all unknown claims.

46. Release of Claims by Settlement Class Members. Upon the Effective Date, Plaintiff and all Settlement Class Members, as well as their spouses, heirs, executors, administrators, trustees, and/or permitted assigns, hereby do and shall be deemed to have fully, finally and forever released, settled, compromised, relinquished and discharged, to the fullest extent possible, any and all of the Released Parties of and from any and all Released Claims. The Settlement Class and each member of the Class who has not submitted a valid Request for Exclusion, fully releases and discharges the Released Parties for the Released Claims for any period during the Released Claims Period.

C. Preliminary Approval of the Settlement

47. As soon as practicable, Class Counsel will submit this Agreement to the Court for its preliminary approval. Such submission will include: (1) such motions, pleadings, and evidence as may be required for the Court to determine that this Agreement is fair, adequate, and reasonable; (2) a Notice of Settlement; and (3) a declaration and proof to the Court verifying that Class Counsel has provided any and all notices of the settlement to the LWDA, as set forth in California Labor Code section 2699(1)(2).

1 **D. Conditional Certification of the Class**

2 48. Defendant hereby consents, solely for purposes of the Settlement set forth in this
3 Agreement, to the conditional certification of the Class, to the conditional appointment of Class
4 Counsel, and to the conditional approval of the Representative Plaintiff; provided, however, that if
5 the Settlement fails to be approved or otherwise fails to be consummated for any reason whatsoever,
6 including but not limited to the Final Judgment not becoming final, then Defendant retains all rights
7 previously available to them, and any provisional certification of any class, or the adoption of any
8 procedure herein, shall be undone and the parties restored to their pre-settlement status as if no
9 settlement had been reached and no decisions were made pursuant to it. In that event, nothing in
10 this Agreement or other papers or proceedings related to the Settlement shall be used as evidence or
11 argument by any party, including any Class Members who opt out, concerning whether or not the
12 claims advanced in the Complaint may properly be maintained as a class action, whether the
13 purported class is ascertainable, or whether Class Counsel or the Representative Plaintiff can
14 adequately represent the members of the class under applicable law.

15 **E. Cooperation**

16 49. The Parties agree to cooperate fully with each other to accomplish the terms and
17 requirements of this Agreement, including but not limited to, the execution of such documents and
18 to take such other action as may reasonably be necessary to implement the terms of this stipulated
19 Settlement. Except as otherwise provided herein, neither party nor any of their attorneys or agents
20 shall initiate any communication with any Class Members for the purpose of encouraging or
21 discouraging them to opt-out of the Class, participate in the Settlement or to object to the Settlement
22 contained herein, unless agreed upon by the other party in writing or if authorized by the Court.
23 This provision in no way limits Class Counsel from communicating with the Class Representative.
24 Nor does the provision limit Class Counsel from responding to any inquiry initiated by any Class
25 Members.

26 50. As soon as practicable, Class Counsel will submit this Agreement to the Court for its
27 preliminary approval. Such submission will include: (1) such motions, pleadings, and evidence as
28 may be required for the Court to determine that this Agreement is fair, adequate, and reasonable; (2)

1 a Notice of Settlement; and (3) a declaration and proof to the Court verifying that Class Counsel has
2 provided any and all notices of the settlement to the LWDA, as set forth in California Labor Code
3 section 2699(1)(2).

4 **F. Notice Of Settlement By Mail**

5 51. Delivery of the Class List and Data. Subject to a Court-approved stipulated
6 protective order governing the disclosure and dissemination of confidential information, a copy of
7 which is attached hereto as **Exhibit C**, Defendant will provide to the Settlement Administrator the
8 Class List and Data, no later than fifteen (15) calendar days after the Court grants preliminary
9 approval of the Settlement.

10 52. Notice by First-Class U.S. Mail. The Settlement Administrator shall, within fifteen
11 calendar (15) days of receipt from Defendant of the Class List and Data, mail the Notice of
12 Settlement via First-Class mail using the United States Postal Service to the most recent address
13 known for each Class Member. Before mailing the Notice of Settlement, the Settlement
14 Administrator shall review the national change of address registry for all Class Members and/or
15 skip trace to determine the most up-to-date addresses of all Class Members. If any Notices of
16 Settlement are returned with a forwarding address, the Settlement Administrator will re-mail the
17 Notice of Settlement to the Class Member whose notice was returned.

18 53. Re-Mailing of Returned Notices. In the event that prior to the final date for any Class
19 Member to Opt-Out, any Notice mailed to the Class Member is returned as having been undelivered
20 by the U.S. Postal Service (“Notice Return”), the Settlement Administrator shall, via skip-tracing,
21 seek an address correction from such Class Member(s), and send a Redirected Notice to the new or
22 different address within seven (7) calendar days.

23 54. The Notice of Settlement. All Class Members will be mailed a Notice of Settlement.
24 The Notice of Settlement will provide: (1) information regarding the nature of the Action; (2) a
25 summary of the Settlement’s principal terms; (3) the Class definition; (4) each Class Member’s
26 estimated Individual Settlement Payment and the formula for calculating Individual Settlement
27 Payments, including the number of Qualifying Wage Statements used to calculate the Class
28 Member’s Individual Settlement Payment; (5) the dates that comprise the Class Period; (6)

1 instructions on how to submit valid Requests for Exclusion, or objections; (7) the deadlines by
2 which the Class Member must submit a Request for Exclusion or objection to the Settlement; (8)
3 the date for the final approval hearing; and (9) the claims to be released. The Notice of Settlement
4 will also inform Class Members that, in order to receive the Individual Settlement Payment, they do
5 not need to do anything except keep the Settlement Administrator apprised of their current mailing
6 addresses.

7 55. Disputes Regarding Individual Settlement Payments. The Number of Qualifying
8 Wage Statements set forth in the Class List and Data shall be presumed to be correct and shall form
9 the basis of the Class Member's anticipated Individual Settlement Payment. Class Members have
10 forty-five (45) calendar days from the original date of mailing the Notice of Settlement to dispute to
11 dispute the number of Qualifying Wage Statements displayed on the Notice of Settlement. Unless a
12 disputing Class Member submits documentary evidence in support of his or her dispute or
13 Defendant agrees with the disputing Class Member (in whole or in part), Defendant's records for
14 the Class Member will be determinative.

15 **G. Requests for Exclusion ("Opt-Out")**

16 56. Request for Exclusion. Any Class Member, other than Plaintiff, who wishes to be
17 excluded from the Settlement must submit a Request for Exclusion to the Settlement Administrator,
18 no later than the Response Deadline. A Request for Exclusion must: (1) explicitly and
19 unambiguously state the following statement or similar statement: "I wish to exclude myself from
20 the settlement reached in the matter of *Stanfield vs. The F.A. Bartlett Tree Expert Company, et al.* I
21 understand by excluding myself, I will not receive any money from the settlement reached in this
22 matter"; (2) contain the name, address, and the last four digits of the Social Security number of the
23 person requesting exclusion; (3) be signed by the Class Member; and (4) be postmarked or fax
24 stamped by the Response Deadline and returned to the Settlement Administrator at the specified
25 address or fax telephone number.

26 57. The Request for Exclusion will not be valid if it is not timely submitted, if it is not
27 signed by the Class Member, or if it does not contain the name, and address of the Class Member.
28 The date of the postmark on the return mailing envelope or fax stamp on the Request for Exclusion

1 shall be the exclusive means used to determine whether the Request for Exclusion was timely
2 submitted. Any Class Member who submits a valid and timely Request for Exclusion will not be
3 entitled to any recovery under the Settlement and will not be bound by the terms of the Settlement
4 or have any right to object, appeal, or comment thereon.

5 58. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Class Members
6 who fail to submit a valid Request for Exclusion on or before the Response Deadline shall be bound
7 by all terms of the Settlement and any final judgment entered in this Action if the Settlement is
8 approved by the Court.

9 59. Defendant's Right to Rescind. As soon as practicable, but no later than twenty-five
10 (25) calendar days after the Response Deadline, the Settlement Administrator shall provide Class
11 Counsel and counsel for Defendant with a final list of Class Members who have timely submitted a
12 written Request for Exclusion. If 5% or more of the Class Members opt out, Defendant shall have
13 the unilateral right, in its sole and absolute discretion to void the Settlement in its entirety. The
14 Parties agree they will not represent or encourage any class member to object to the Settlement or to
15 opt out. Defendant agrees it will pay the Claims Administrator fee up to the date of Defendant's
16 notice to the Administrator if it chooses to void the Settlement.

17 **H. Declaration of Compliance**

18 60. As soon as practicable, but no later than twenty-five (25) calendar days after the
19 Response Deadline, the Settlement Administrator shall provide Class Counsel and counsel for
20 Defendant with a declaration attesting to completion of the notice process set forth in this
21 Agreement, including an explanation of efforts to resend undeliverable Class Notices returned with
22 forwarding addresses, a summary of disputed claims and the names of Class Members who timely
23 submitted a Request for Exclusion, which declaration shall be filed with the Court by Class Counsel
24 along with their papers requesting final approval of the Settlement.

25 **I. Sufficient Notice**

26 61. Compliance with the procedures described in this Section (Section **) shall
27 constitute due and sufficient notice to Class Members of this Settlement and the final approval
28 hearing, shall satisfy the requirements of due process, and nothing else shall be required of the

1 Plaintiff, Class Counsel, Defendant, Counsel for Defendant, or the Settlement Administrator to
2 provide additional notice of the settlement and the final approval hearing, unless expressly ordered
3 by the Court.

4 **J. Objections To Settlement**

5 62. Any Class Member who does not opt-out of this Settlement is entitled to object to the
6 Settlement. To object to the Settlement, a Class member must return by mail a written Objection to
7 Class Settlement to the Settlement Administrator at the specified address by the Response Deadline.
8 For any Class Member to whom the Notice of Settlement is re-mailed because the initial mailing
9 did not reach him or her, that Class Member shall have fifteen (15) calendar days from the date of
10 re-mailing to submit an appropriate response, including objections. Any Class Member who
11 submits a written Objection to Class Settlement will be deemed to participate in the class Settlement
12 should the objection be overruled.

13 63. The Notice of Objection to Class Settlement must be signed by the Class Member
14 and state: (1) the full name of the Class Member; (2) the dates of employment of the Class Member;
15 (3) the last four digits of the Class Member's Social Security number and/or the Employee ID
16 number; (4) the basis for the objection; and (5) if the Class Member intends to appear at the Final
17 Approval/Settlement Fairness Hearing. Class Members who fail to make objections in the manner
18 specified above shall be deemed to have waived any objections and shall be foreclosed from making
19 any objections (whether by appeal or otherwise) to the Settlement. Class Members who submit a
20 timely Notice of Objection to Class Settlement will have a right to appear at the Final
21 Approval/Settlement Fairness Hearing in order to have their objections heard by the Court. Any
22 Class Member who submits an Objection to Class Settlement will be deemed to participate in the
23 Settlement should the objection be overruled.

24 64. At no time shall any of the Parties or their counsel seek to solicit or otherwise
25 encourage Class Members to file or serve an Objection to Class Settlement or appeal from the Order
26 and Final Judgment. Class Counsel shall not represent any Class Members with respect to any such
27 objections. Any Class Member who submits an Objection to Class Settlement will be deemed to
28 participate in the class Settlement should the objection be overruled.

1 **K. Final Approval Hearing**

2 65. Final Settlement Approval Hearing. Upon expiration of the deadlines to submit a
3 Request for Exclusion or Notice of Objections to the Settlement, and with the Court's permission, a
4 Final Approval/Settlement Fairness Hearing shall be conducted. The Final Approval/Settlement
5 Fairness Hearing shall be held on a date approved by the Court, but no earlier than ten days after the
6 last day for Defendant to exercise its right to void this Settlement. The exact date, time and location
7 of the final approval hearing shall be set forth in the Class Notice. At the final approval hearing, the
8 Representative Plaintiff, Class Counsel, and Counsel for Defendant shall ask the Court to give the
9 Final Approval of the Settlement along with the amounts properly payable for: (i) Net Settlement
10 Amount; (ii) the PAGA Payment; (iii) the Class Counsel Award; (iv) the Enhancement Payment;
11 and (v) Settlement Administration Costs. Class Counsel will be responsible for drafting all
12 documents necessary to obtain final approval. Class Counsel will also be responsible for drafting
13 the attorneys' fees and costs application to be heard at the Final Approval Hearing.

14 66. Entry of Judgment and Continued Jurisdiction of the Court. Concurrent with the
15 Motion for Final Approval, the Parties shall also jointly seek the entry of Judgment consistent with
16 the terms of this Agreement. After entry of the Judgment, the Court shall have continuing
17 jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of
18 the Settlement, (ii) Settlement administration matters, and (iii) such post-Judgment matters as may
19 be appropriate under court rules or as set forth in this Agreement.

20 67. Notice to LWDA. Class Counsel shall provide, within seven (7) calendar days of the
21 Court entering a Final Judgment that provides for or denies an award of civil penalties pursuant to
22 the California Labor Code, any and all notices of the Final Judgment to the LWDA as set forth in
23 California Labor Code section 2699(l)(3). Further, within seven (7) calendar days of Class Counsel
24 providing notice to the LWDA in accordance with California Labor Code section 2699(l)(3), Class
25 Counsel shall provide the Court and Defendant's Counsel with proof of compliance with California
26 Labor Code section 2699(l)(3).

27 **L. Time for Disbursement**

28 68. Funding of the Gross Settlement Amount. Within fifteen (15) calendar days after the

Effective Date, Defendant shall make a one-time deposit of the Gross Settlement Amount into a Qualified Settlement Fund to be established by the Settlement Administrator.

69. Timing of the Distribution of the Settlement Payments. Within five (5) business days of Defendant funding the Gross Settlement Amount, the Settlement Administrator shall issue payments to (1) Settlement Class Members; (2) the Labor and Workforce Development Agency; (3) Plaintiff; and (4) Class Counsel. The Settlement Administrator shall also issue a payment to itself for services performed in connection with the Settlement.

70. Uncashed Settlement Payment Checks. Any checks issued by the Settlement Administrator to Settlement Class Members shall be negotiable for not less than one hundred and eighty (180) days from the date of their issuance. Any settlement checks remaining un-cashed after one hundred and eighty (180) calendar days after being issued shall be void and the amount shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq., for the benefit of those Settlement Class members who did not cash their checks until such time that they claim their property. This is a non-reversionary settlement.

71. Certification of Completion. Upon completion of administration of the Settlement, the Settlement Administrator shall provide a written final accounting declaration under oath to certify such completion to the Court and counsel for all Parties. The declaration shall be adequate to demonstrate full compliance with all duties set forth in this Agreement.

72. Administration Costs if Settlement Fails or is Delayed. If an objection to the Settlement is filed with the Court, regardless of the ultimate outcome of any appeals taken, or if the Settlement is voided or rescinded, any costs incurred by the Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise specified in this Agreement.

M. The Settlement Administrator

73. Duties of the Settlement Administrator. Subject to the Court's approval, Class Counsel and Defendant designate Simpluris, Inc., an experienced settlement administrator, to process this Settlement. The Settlement Administrator shall provide the following services:

- a. Establish and maintain a Qualified Settlement Fund account;

- 1 b. Calculate and mail the amount of the Settlement each Class Member is
2 eligible to receive;
- 3 c. Calculate and direct the disbursements for payments from the Net Settlement
4 Amount, including the printing and issuance of checks and preparation and filing of any required tax
5 forms associated with the Administrator's duties hereunder;
- 6 d. Verify the last known address for each Class Member through a generally
7 utilized, national address update database prior to mailing the Notice of Settlement;
- 8 e. Finalize, print and mail the Notice of Settlement to Class Members in English
9 and Spanish;
- 10 f. Conduct additional address searches for mailed Class Notices that are returned
11 as undeliverable and, to the extent new and more current addresses are found, also reprint and re-mail
12 Notice of Settlement accordingly;
- 13 g. Establish and maintain a toll-free informational telephone support line to assist
14 Class Members who have questions regarding the Notice of Settlement;
- 15 h. Settle disputes from Class Members regarding the information from Defendant
16 on which Individual Settlement Payments are calculated, with the assistance of Defendant's counsel;
- 17 i. Record and track responses to the Notice mailed to Class Members and the
18 dates thereof (including recording the postmark date and identity of any Class Members who request
19 exclusion or object and promptly forwarding such information to Defendant's counsel and Class
20 Counsel using numbers instead of providing identifying information).
- 21 j. Field inquiries from Class Members;
- 22 k. Receive and timely process any Requests for Exclusion or Objection to Class
23 Settlement; and
- 24 l. Provide declarations, including a final accounting declaration adequate to
25 demonstrate full compliance with all duties set forth in this Agreement, and/or other information to
26 the Court as requested.
- 27 m. The Settlement Administrator shall keep Defendant's counsel and Class
28 Counsel timely apprised of the performance of all Settlement Administrator responsibilities by
weekly emails. All disputes relating to the Settlement Administrator's performance of its duties will

1 be referred to the Court, if necessary, which will have continuing jurisdiction over this Settlement
2 until all payments and obligations contemplated by this Settlement Agreement have been fully carried
3 out.

4 n. At least twenty-one (21) days before the Final Fairness Hearing, the Settlement
5 Administrator shall prepare a declaration of compliance and due diligence and proof of mailing with
6 regard to the mailing and emailing of the Notice of Settlement, and any attempts by the Settlement
7 Administrator to locate Settlement Class Members, its receipt of timely and valid requests for
8 exclusion, and its inability to deliver the Notice of Settlement to Settlement Class Members due to
9 invalid addresses (“Due Diligence Declaration”), to Class Counsel and Defendant’s counsel for
10 presentation to the Court. Class Counsel shall be responsible for filing the Due Diligence Declaration
11 with the Court.

12 74. Settlement Administrator’s Reports of Information. The Settlement Administrator
13 shall provide Defense Counsel and Class Counsel a weekly report which certifies the number of
14 Class Members who have submitted a Request for Exclusion or an Objection to Class Settlement.
15 The Settlement Administrator shall also forward to counsel for both Parties any Notices of
16 Objection received immediately upon receipt. Further, the Settlement Administrator shall
17 immediately forward any Request for Exclusion to the Parties’ counsel so that they can determine
18 whether the Request for Exclusion is valid and timely.

19 75. Distribution of Payments in Accordance with Agreement. The Settlement
20 Administrator shall not disburse the settlement funds except as provided herein, as ordered by the
21 Court, or as agreed upon, in writing, by Defense Counsel and Class Counsel. Subject to further
22 orders and/or directions as may be made by the Court, the Settlement Administrator is authorized to
23 execute such transactions on behalf of the Class Members as are consistent with the terms of this
24 Agreement.

25 76. No person shall have any claims against Defendant, Defendant’s Counsel, Plaintiff,
26 Class Members, Class Counsel or the Settlement Administrator based on distribution and payments
27 made in accordance with this Settlement.

28 **N. Taxes**

1 66. Administration of Taxes by the Settlement Administrator. The Settlement
2 Administrator shall be responsible for issuing to Plaintiff, Settlement Class Members, and Class
3 Counsel, 1099 forms or other tax forms as may be required by law for all amounts paid pursuant to
4 this Agreement.

5 67. Tax Treatment of Individual Settlement Payments. All Individual Settlement
6 Payments shall be allocated as follows: One-hundred percent (100%) penalties reportable on IRS
7 Form 1099. Plaintiff and Settlement Class Members understand and agree that they will be solely
8 responsible for the payment of any and all taxes and penalties assessed on their respective payments
9 described herein.

10 68. Tax Liability. Defendant, Defendant's counsel, the Settlement Administrator, and
11 Plaintiff's counsel make no representation as to the tax treatment or legal effect of the payments
12 called for hereunder, and Plaintiff and Settlement Class Members are not relying on any statement,
13 representation, or calculation by Defendant, Defendant's counsel, Plaintiff's counsel, or by the
14 Settlement Administrator in this regard. Plaintiff and Settlement Class Members understand and
15 agree that they will be solely responsible for the payment of any and all taxes and penalties assessed
16 on their respective payments described herein and will defend, indemnify, and hold Defendant,
17 Defendant's counsel, Plaintiff's counsel and the Settlement Administrator free and harmless from
18 and against any claims resulting from treatment of such payments as non-taxable penalties/damages.

19 **N. Circular 230 Disclaimer**

20 66. Each party to this Agreement (for purposes of this section, the "Acknowledging
21 Party"; and each party to this Agreement other than the Acknowledging Party, an "Other Party")
22 acknowledges and agrees that (1) no provision of this Agreement, and no written communication or
23 disclosure between or among the parties or their attorneys and other advisers, is or was intended to
24 be, nor shall any such communication or disclosure constitute or be construed or be relied upon as,
25 tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10,
26 as amended); (2) the Acknowledging Party (a) has relied exclusively upon his, her, or its own,
27 independent legal and tax advisers for advice (including tax advice) in connection with this
28 Agreement, (b) has not entered into this Agreement based upon the recommendation of any other

1 party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
2 communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty
3 that may be imposed on the Acknowledging Party; and (3) no attorney or adviser to any other party
4 has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax
5 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
6 Acknowledging Party of the tax treatment or tax structure of any transaction, including any
7 transaction contemplated by this Agreement.

8 **O. Individual Settlement Awards Do Not Trigger Additional Benefits**

9 67. All individual Settlement awards to Class Members shall be deemed to be income to
10 such Class Members solely in the year in which such awards actually are received by the Class
11 Members. It is expressly understood and agreed that the receipt of such individual Settlement
12 awards will not entitle any Class Member to additional compensation or benefits under any
13 company bonus, contest or other compensation or benefit plan or agreement in place during the
14 period covered by the Settlement, nor will it entitle any Class Member to any increased retirement,
15 401(k) benefits or matching benefits, or deferred compensation benefits. No deductions or
16 contributions for 401(k) shall be made for the individual Settlement awards. It is the intent of this
17 Settlement that the individual Settlement awards provided for in this Agreement are the sole
18 payments to be made by Defendant to the Class Members in connection with this Settlement, and
19 that the Class Members are not entitled to any new or additional compensation or benefits as a result
20 of having received the individual Settlement awards (notwithstanding any contrary language or
21 agreement in any benefit or compensation plan document that might have been effect during the
22 period covered by this Settlement). Defendant and each of their present and former parent
23 corporations and affiliates retain the right to modify and/or amend the language of their employee
24 benefit plans, employment policies, and stock option plans, and to seek to have modified and/or
25 amended the language of any jointly trustee benefit plans, to make clear that any amounts paid as a
26 result of this Settlement are not considered by Defendant as compensation or wages, or payments
27 for "hours worked," as defined by the applicable plans and policies, and that no additional
28 contributions or benefits will be provided by Defendant by reason of the Settlement.

1 **V. LIMITATIONS ON USE OF THIS SETTLEMENT**

2 **N. No Admission**

3 68. Neither the acceptance nor the performance by Defendant of the terms contained in
4 this Agreement nor any of the related negotiations or proceedings is or shall be claimed to be,
5 construed as, or deemed a precedent or an admission by Defendant of the truth of any allegations in
6 any version of the Complaint.

7 **O. Non-Evidentiary Use**

8 69. Neither this Agreement nor any of its terms, nor any statements or conduct in the
9 negotiation or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member
10 (including any individual who requested to be excluded from the Class), Defendant, or their or their
11 respective counsel, in the Litigation or any other proceeding, except as is reasonably necessary to
12 effectuate its purpose and terms. This Agreement may be used by Defendant and/or the Released
13 Persons to prove or defend against any claim released herein by any Class Member in any judicial,
14 quasi-judicial, administrative, or governmental proceeding. Nothing in this Agreement abridges a
15 Class Member's right to file a charge or participate in any manner in an investigation, hearing, or
16 proceeding under the laws enforced by Equal Employment Opportunity Commission.

17 **VI. MISCELLANEOUS PROVISIONS**

18 **N. Acknowledgement that the Settlement is Fair and Reasonable.**

19 70. The Parties believe this Agreement is a fair, adequate, and reasonable settlement of
20 the Action and have arrived at this Settlement after arm's-length negotiations, mediation, and in the
21 context of adversarial litigation, taking into account all relevant factors, present and potential. The
22 Parties further acknowledge that they are each represented by competent counsel and that they have
23 had an opportunity to consult with their counsel regarding the fairness and reasonableness of this
24 Agreement.

25 **O. Amendments**

26 71. The terms and provisions of this Agreement may be amended only by a written
27 agreement, which is both (1) signed by the named Plaintiff, Class Counsel, Defendant, and Counsel
28 for Defendant and (2) approved by the Court.

1 **P. No Inducements**

2 72. Plaintiff and Defendant acknowledge that they are entering into this Agreement as a
3 free and voluntary act without duress or undue pressure or influence of any kind or nature
4 whatsoever and that neither Plaintiff nor Defendant have relied on any promises, representations, or
5 warranties regarding the subject matter hereof other than as set forth in this Agreement.

6 **Q. Counterparts**

7 73. This Agreement, and any amendments hereto, may be executed in any number of
8 counterparts, each of which when executed and delivered shall be deemed to be an original and all
9 of which taken together shall constitute but one and the same instrument. This Agreement will
10 become effective on the date when the last person signs and dates it.

11 **R. No Prior Assignments**

12 74. The respective Parties and their counsel represent, covenant and warrant that they
13 have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer or
14 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action
15 or right herein released and discharged except as set forth herein.

16 **S. Integration Clause**

17 75. This Settlement contains the entire Agreement between the Parties relating to the
18 settlement transaction contemplated hereby, and all prior or contemporaneous agreements,
19 understandings, representations and statements, whether oral or written and whether by a party or
20 such party's legal counsel, are merged herein. No rights hereunder may be waived except in
21 writing.

22 **T. Severability**

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

V. Exhibits Incorporated by Reference

W. Entire Agreement

X. Captions

Y. California Law Governs

PLAINTIFF & CLASS REPRESENTATIVE

DocuSigned by:

55DAA771233FAA
Arron Stanfield

JOINT STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

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**THE F.A. BARTLETT TREE EXPERT
COMPANY, INC.**

Date: _____

David G. Marren
Vice President of Safety and Regulatory Affairs

APPROVED AS TO FORM AND CONTENT

Dated: October 12, 2020

DIVERSITY LAW GROUP, P.C.

By: _____
Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
Attorneys for Plaintiff Arron Stanfield

Dated: October 12, 2020

POLARIS LAW GROUP LLP

By: William L. Marder
William L. Marder
Attorneys for Plaintiff Arron Stanfield

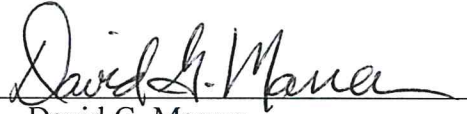
Dated: _____, 2020

FORD & HARRISON, LLP

By: _____
David L. Cheng, Esq.
Daniel R. Lyman, Esq.
Attorneys for DEFENDANT
THE F.A. BARTLETT TREE EXPERT
COMPANY, INC.

THE F.A. BARTLETT TREE EXPERT
COMPANY, INC.

Date: 10/5/2020


David G. Marren

Vice President of Safety and Regulatory Affairs

APPROVED AS TO FORM AND CONTENT

Dated: _____, 2020

DIVERSITY LAW GROUP, P.C.

By: _____

Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
Attorneys for Plaintiff Arron Stanfield

Dated: _____, 2020

POLARIS LAW GROUP LLP

By: _____

William L. Marder
Attorneys for Plaintiff Arron Stanfield

Dated: October 9, 2020

FORD & HARRISON, LLP


By: _____

David L. Cheng, Esq.
Daniel R. Lyman, Esq.
Attorneys for DEFENDANT
THE F.A. BARTLETT TREE EXPERT
COMPANY, INC.

EXHIBIT A

Superior Court of California, County of Sonoma

If you worked for The F.A. Bartlett Tree Expert Company as an hourly non-exempt employee in the state of California and received overtime wages at any time between April 1, 2019 through October 3, 2019, a class action settlement will affect your rights.

A California court authorized this notice. This is not a solicitation from a lawyer.

«BarcodeString»

SIMID «SIMID»

ATTN: «FirstName» «LastName»

«Address1» «Address2»

«City» «Abbrev» «Zip»

**YOU ARE ESTIMATED TO RECEIVE
APPROXIMATELY
\$«MERGED_EstSettAmnt_CALC»
THROUGH THIS CLASS ACTION
SETTLEMENT**

- Arron Stanfield (“Plaintiff”) filed a class action lawsuit against The F.A. Bartlett Tree Expert Company (“Defendant” or the “Company”) on behalf of himself and other non-exempt employees who received overtime wages. The lawsuit is entitled *Arron Stanfield v. The F.A. Bartlett Tree Company, et al.*, Superior Court of California, County of Sonoma, Case No. SCV-265929 and alleges the following claims: (1) failure to provide accurate wage statements; and (2) claims under California’s Private Attorneys General Act.
- Plaintiff, on behalf of the Class, and Defendant have entered into a settlement agreement, which is subject to court approval. The Court in charge of this case has preliminarily approved the settlement. The Court still has to decide whether to grant final approval of the settlement. Payments will be made only if the Court grants final approval of the settlement and after any appeals are resolved.
- If you qualify as a Class Member, you could receive money from the settlement.
- Your rights and options – and the deadlines to exercise them – are explained in this notice.
- Your legal rights are affected whether you act or don’t act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING	By doing nothing, you will get a payment from the settlement. But, you give up any rights to bring your own lawsuit against the Defendants about the same legal claims in this lawsuit. The estimated amount of your settlement payment is shown above. To receive your settlement payment, all you need to do is keep the Settlement Administrator informed of your current mailing address. Once the Court grants final approval of the settlement, the Settlement Administrator will mail your check to the address on file for you.
EXCLUDE YOURSELF (Deadline: _____, 2020)	By asking to be excluded from the settlement, you will not receive a settlement payment. But, you keep any rights you may have to file a separate lawsuit against Defendants about the same legal claims in this lawsuit. Important: You cannot ask to be excluded <u>and</u> still get a class settlement payment.
OBJECT (Deadline: _____, 2020)	If you do not like the settlement, you can send a written objection to the Settlement Administrator by the deadline. If your objection is overruled, you will still be bound by the terms of the settlement and will receive a settlement payment. Important: If you object to the settlement, you cannot also ask to be excluded.

SUBMIT A DATA DISPUTE
(Deadline: _____, 2020)

Dispute the number of wage statements you received that contained payment for overtime wages, as identified in section 11 below.. If you dispute the number of overtime wage statements credited to you, and you do not exclude yourself from the settlement, you will still receive a payment and give up any rights to sue for the Released Claims.

BASIC INFORMATION

1. Why did I receive this Notice?

Employment records show that you worked for The F.A. Bartlett Tree Expert Company (as an hourly non-exempt employee and were paid overtime wages in California between April 1, 2019 through October 3, 2019. A settlement has been reached in a class action lawsuit against the Company that affects your rights.

2. What is this class action about?

This lawsuit, known as *Stanfield v. The F.A. Bartlett Tree Company, et al.*, Superior Court of California, County of Sonoma, Case No. SCV-265929, alleges that the Company failed to provide accurate wage statements. The lawsuit alleges that these practices violated the California Labor Code and the Private Attorneys General Act. It seeks to recover civil and statutory penalties.

3. How do the Company respond?

The Company has denied and continues to deny all of the allegations in the lawsuit. The Company contends that it has complied with the California Labor Code and all similar laws and regulations. The Company further contends that this lawsuit could not be maintained as a class action if it were litigated rather than settled.

4. What is a class action and who is involved?

In a class action lawsuit, one or more people, called “class representatives” (in this case Arron Stanfield), sue on behalf of other people who may have similar claims. The individuals the class representative purports to represent are the “class” or “class members.” One court resolves the issues for everyone in the class, except for those people who request to exclude themselves from the class.

5. Why is this lawsuit being settled?

After good-faith settlement negotiations, Plaintiff and the Company have agreed to settle this case rather than go to trial. The settlement represents a compromise of highly disputed claims and is not an admission that the Company violated the law. The parties and their attorneys believe the settlement is in the best interests of the Class, given the risks and expense of going to trial.

6. Has the Court decided who is right?

No. The Court did not decide in favor of Plaintiff or the Company.

7. Who is the Settlement Administrator?

The Settlement Administrator is an independent third party appointed by the Court to send this notice, process and issue settlement checks, and otherwise administer the settlement. The Court has approved Simpluris, Inc. to be the

Settlement Administrator in this case. You may contact the Settlement Administrator to provide updated contact information, make corrections regarding your employment information at the Company, or ask questions regarding the processing of settlement awards. You may contact the Settlement Administrator at:

Stanfield/ The F.A. Bartlett Tree Company
c/o Simpluris, Inc.

FAX NUMBER: _____

YOUR RIGHTS AND OPTIONS

8. Am I part of this Class?

In preliminarily approving the settlement, the Court has decided that any current or former non-exempt employee of Defendant who was paid overtime wages in California at any time from April 1, 2019 through October 3, 2019 (the “Class Period”) is a Class Member. The Defendant’s records indicate that you are a Class Member.

9. What does the settlement generally provide?

The proposed settlement provides for a payment by Defendant of \$222,500.00 to fully and finally resolve all claims in the lawsuit (referred to as the “Gross Settlement Amount”). The total amount to be distributed to Class Members who can be located, and who do not exclude themselves from the settlement, will be the value of the Gross Settlement Amount after deducting the following (the “Net Settlement Amount”): (a) settlement-administration costs not to exceed \$4,000.00; (b) class-representative Enhancement Payment to Plaintiff not to exceed \$10,000.00; (c) Class Counsel’s attorneys’ fees not to exceed \$74,166.66; (d) Class Counsel’s actual litigation costs and expenses as supported by declaration not to exceed \$15,000.00; and (e) payment of \$7,500.00 to the Labor and Workforce Development Agency. **Class Counsel’s attorneys’ fees and costs, and Plaintiff’s class-representative Enhancement Payment, remain subject to Court approval.**

No portion of the Net Settlement Amount will be returned to Defendant under any circumstances.

10. How do I receive money under the settlement?

You do not have to do anything to receive your settlement share.

11. What is my estimated share of the settlement?

The estimated gross share you will receive under the settlement if you are a participating Class Member is \$**. The actual amount you receive may be higher or lower than this amount.

Your estimated share of the settlement is based on the number of wage statements you received from the Company that included payment for overtime wages during the Class Period as compared to the total wage statements received by all Class Members that included payment for overtime wages in that same period. Based upon Defendant’s records, the number of wage statements you received that contained payment for overtime wages is determined to be **. If this information appears correct, you do not need to do anything further to receive your settlement payment. If you disagree with the number of wage statements with payment for wages, see section 13 below.

12. Will I have to pay taxes on my award?

One hundred percent (100%) of your award will be treated as penalties and will be reported on IRS Form 1099. **You will be responsible for correctly characterizing this compensation for tax purposes and paying any taxes that may be due on the payment you receive.**

13. You should consult a tax professional for more information about your own specific situation. What if I Believe the Wage Statement Count Is Inaccurate?

If you believe the number of wage statements you received that included payment for overtime wages during the Class Period is inaccurate, you may dispute it by sending a letter to [REDACTED] [ADMINISTRATOR'S ADDRESS] no later than _____, 2020. Be sure to include your name, address, telephone number, last four digits of your Social Security Number, and a statement as to what and why you are disputing. Also attach a copy of any documentation you want to include to support your dispute.

14. How do I request to be excluded from the settlement?

If you wish to be excluded from the settlement, you must write to the Settlement Administrator at the address specified above in Section 7 and request to be excluded. Your request must: (1) include an explicit and unambiguous statement to the effect of: "I wish to exclude myself from the settlement reached in the matter of *Stanfield vs. The F.A. Bartlett Tree Expert Company, Inc.* I understand by excluding myself, I will not receive any money from the settlement reached in this matter."; (2) include your name, address, and the last four digits of your Social Security number; (3) include your signature; and (4) be postmarked (if mailed), or fax stamped (if faxed) to the Settlement Administrator no later than [date of the Response Deadline].

If you do not complete and timely submit a valid request to be excluded from the settlement, you will be bound by all terms and conditions of the settlement, including its release of claims. If you do submit a timely and valid request to be excluded, you will no longer be a class member, you will not receive any money from the settlement, and you will be barred from participating in any portion of the settlement, but you will retain the right to sue the Company separately for the same legal claims contained in this lawsuit.

15. May I object to the settlement?

If you believe the settlement is unfair or inadequate, you may object, personally or through an attorney at your own expense, by mailing a written objection to the Settlement Administrator at the address set forth above in Section 7. You **cannot** object to the settlement **and** exclude yourself from the settlement.

Your objection must be signed and include: (1) your full name; (2) the dates of your employment; (3) the last four digits of your Social Security number and/or your Employee ID number; (4) the basis for the objection; and (5) if you intend to appear at the Final Approval/Settlement Fairness Hearing; and (6) the name of the case *Stanfield vs. The F.A. Bartlett Tree Expert Company, Inc.* To be effective, your objection must be postmarked (if mailed) or fax stamped (if faxed) no later than [date of the Response Deadline]. Do not telephone the Court or the Company's counsel.

If the Court rejects your objection, you will still be bound by the terms of the settlement, and you will not then be able to exclude yourself from the settlement.

16. When will I receive my payment?

17. The Court will hold a hearing on [insert date] to decide whether to approve the settlement. If the judge approves the settlement and there are no objections or appeals, distribution of payments will be approximately 60 days later. Please be patient. **What if I do nothing?**

If you do nothing, you will receive your settlement share and you will give up any rights you would otherwise have to sue the Company for the claims described below in Section 21 under claims released.

THE LAWYERS REPRESENTING YOU

18. Do I have a lawyer in this case?

The Court has determined that Larry W. Lee, Kristen M. Agnew, and Nicholas Rosenthal of Diversity Law Group, P.C. and William L. Marder of Polaris Law Group, LLP are qualified to represent you and all Class Members. The lawyers for these firms are called “Class Counsel.” They are experienced in handling similar cases. Their contact information is provided at the end of this Notice.

19. May I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. Nonetheless, you may hire your own lawyer if you wish. If you hire your own lawyer, however, you are responsible for paying for that lawyer.

20. How will Class Counsel and the Class Representative be paid?

Class Counsel will be paid from the Gross Settlement Amount. Class Counsel will ask for up to \$74,166.66 in attorneys’ fees and for actual litigation costs incurred up to a maximum of \$15,000.00, the actual amount of which will be determined by the Court at the final approval hearing (see section 22 below for details as to when this hearing will take place). Class members (like you) do not have to pay the fees and costs of Class Counsel. **If you elect, however, to hire your own lawyer, you have to make your own arrangements to compensate your lawyer.**

If approved by the Court, a service payment for the Plaintiff of an amount up to \$10,000.00 will be paid from the Gross Settlement Amount for his work and efforts in prosecuting this case, and for undertaking the risks of costs (in the event the outcome of this lawsuit was not favorable).

RELEASE OF CLAIMS

21. What claims are being released as part of the settlement?

If you do not submit a timely request to be excluded from the settlement, you will be giving up your right to bring a legal claim against the Company for any legal claims arising during the Class Period that are based on the facts alleged by Plaintiff in the lawsuit, or any claims that could have been brought under the facts and allegations made in the lawsuit. Specifically, you will be giving up or “releasing” the claims described below:

(a) any and all claims that could have been brought under the facts and allegations made in the operative Complaint, including claims for violation of Labor Code § 226, that accrued during the Class Period; and (b) any and all claims for penalties under the California Private Attorneys’ General Act predicated on the violation of Labor Code § 226 based on the facts as alleged in the operative Complaint that accrued during the Class Period (April 1, 2019 to October 3,

2019. This release will not go into effect until after the company has disbursed the settlement funds, all objections have been resolved by the trial court, any appeal has been resolved, or time to appeal has expired.

FINAL SETTLEMENT APPROVAL HEARING

22. When will the Court consider whether to finally approve the settlement?

The Court will hold a hearing in Courtroom [REDACTED] of the California Superior Court, County of Sonoma, located at 600 Administration Drive, Santa Rosa, California 95403, on [REDACTED], 2021 at [REDACTED] .m, to decide whether to finally approve the settlement as fair, reasonable, and adequate. At that time, the Court also will be asked to approve Class Counsel's request for attorneys' fees and reimbursement of costs, and the Class Representative Payment.

It is not necessary for you to appear at this hearing. If you have timely submitted an objection to the settlement and a notice of intent to appear, you may appear at the hearing to argue your objection to the Court, or have an attorney represent you at the hearing at your own expense, but only if by [REDACTED], 2020, you have submitted a notice to the Settlement Administrator of your intent to appear at the hearing, in accordance with the instructions above.

The hearing may be postponed without further notice to the Class. If the settlement is not approved, the lawsuit will continue to be prepared for trial or other judicial resolution.

FURTHER INFORMATION

23. How do I get more information?

This Notice provides a summary of the basic terms of the settlement. If you have more questions about this Notice or this lawsuit, you can contact Class Counsel, whose contact information is below, or the Settlement Administrator at 1- [REDACTED] :

CLASS COUNSEL:

Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
DIVERSITY LAW GROUP, P.C.
515 s. Figueroa Street, Suite 1250
Los Angeles, CA Suite 200
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

William L. Marder
POLARIS LAW GROUP LLP
501 San Benito Street, Suite 200
Hollister, CA 95023
Telephone: (831) 531-4214
Facsimile: (831) 634-0333

For the settlement's complete terms and conditions, please consult the detailed Joint Stipulation of Class Settlement and Release which is attached as Exhibit 1 to the Declaration of Kristen M. Agnew in support of the Motion for Preliminary Approval of Class Action Settlement filed on [date of filing].

IMPORTANT:

1. **PLEASE DO NOT TELEPHONE THE COURT OR THE COMPANY'S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS.**
2. **If you move to a different address, please send the Settlement Administrator your new address. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your settlement payment.**

EXHIBIT B

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
Nicholas Rosenthal (State Bar No. 268297)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder, Esq. (State Bar No. 170131)
Polaris Law Group LLP
501 San Benito Street, Suite 200
Hollister, CA 95023
Tel: (831) 531-4214
Fax: (831) 634-0333

Attorneys for Plaintiff and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA**

ARRON STANFIELD, as an individual
and on behalf of all others similarly
situated,

Plaintiffs,

vs.

THE F.A. BARTLETT TREE EXPERT
COMPANY, a Connecticut corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: SCV-265929

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES FOR:**

**(1) VIOLATION OF CAL. LABOR CODE §
226(a);**

**(2) VIOLATION OF CAL. LABOR CODE §§
2698, *ET SEQ.*;**

DEMAND OVER \$25,000.00

**ELECTRONICALLY FILED
Superior Court of California
County of Sonoma
1/28/2020 12:43 PM**

**Arlene D. Junior, Clerk of the Court
By: Janie Dorman, Deputy Clerk**

1 Plaintiff Arron Stanfield ("Plaintiff") hereby submits this Class and Representative
2 Action Complaint ("Complaint") against Defendant The F.A. Bartlett Tree Expert Company
3 ("Defendant") and Does 1 through 50 (hereinafter collectively referred to as "Defendants"), on
4 behalf of himself and a class of all other similarly situated current and former employees of
5 Defendants for civil and statutory penalties under the California Labor Code as follows:

6 **INTRODUCTION**

7 1. This class and representative action is within the Court's jurisdiction under
8 California Labor Code sections 226 and 2698 *et seq.*

9 2. This Complaint challenges systemic illegal employment practices resulting in
10 violations of the California Labor Code against individuals who worked for Defendants.

11 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
12 jointly and severally, have acted intentionally and with deliberate indifference and conscious
13 disregard to the rights of all employees in Defendants' failure to provide accurate itemized wage
14 statements to Plaintiff and Class Members.

15 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 have engaged in, among other things a system of willful violations of the California Labor Code
17 by creating and maintaining policies, practices and customs that knowingly deny employees the
18 above stated rights and benefits.

19 **JURISDICTION AND VENUE**

20 5. This Court has jurisdiction over the violations of California Labor Code sections
21 226 and 2698 *et seq.*

22 6. Venue is proper in Sonoma County because Defendant provides services in
23 Sonoma County, and Plaintiff is currently employed by Defendant in Sonoma County.

24 **PARTIES**

25 7. Plaintiff was employed by Defendant from in or around December 2017 to on or
26 about November 11, 2019. Throughout his employment with Defendant, Plaintiff was a non-
27 exempt, hourly employee.

28 8. Plaintiff was and is the victim of the policies, practices, and customs of Defendant

1 complained of in this action in ways that have deprived him of the rights guaranteed by
2 California Labor Code sections 226 and 2698 *et seq.*

3 9. Plaintiff is informed and believes, and based thereon alleges, that the F.A. Bartlett
4 Tree Expert Company is a Connecticut corporation that provides services throughout California,
5 including locations in Sonoma, California.

6 10. Plaintiff is informed and believes, and based thereon alleges, that at all times
7 herein mentioned Defendants are and were business entities, individuals, and partnerships,
8 licensed to do business and actually doing business in the State of California. As such, and based
9 upon all the facts and circumstances incident to Defendants' business, Defendants are subject to
10 the California Labor Code.

11 11. Plaintiff does not know the true names or capacities, whether individual, partner
12 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
13 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
14 complaint when the true names and capacities are known. Plaintiff is informed and believes and
15 based thereon alleges that each of said fictitious defendants was responsible in some way for the
16 matters alleged herein and proximately caused Plaintiff and members of the general public and
17 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

18 12. At all times herein mentioned, each of said Defendants participated in the doing
19 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
20 Defendants, and each of them, were the agents, servants and employees of each of the other
21 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
22 acting within the course and scope of said agency and employment.

23 13. Plaintiff is informed and believes, and based thereon alleges, that at all times
24 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
25 joint venturer of, or working in concert with each of the other co-Defendants and was acting
26 within the course and scope of such agency, employment, joint venture, or concerted activity. To
27 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
28 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting

1 Defendants.

2 14. At all times herein mentioned, Defendants, and each of them, were members of,
3 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
4 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

5 15. At all times herein mentioned, the acts and omissions of various Defendants, and
6 each of them, concurred and contributed to the various acts and omissions of each and all of the
7 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
8 herein mentioned, Defendants, and each of them, ratified each and every act or omission
9 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
10 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
11 damages as herein alleged.

12 **CLASS ACTION ALLEGATIONS**

13 16. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
14 California Code of Civil Procedure section 382. Plaintiff proposes the following class: all current
15 and former non-exempt employees of Defendant in the State of California who were paid
16 overtime wages at any time between January 28, 2019, through the present (the "Class").

17 17. **Numerosity:** The members of the Class are so numerous that joinder of all
18 members would be impractical, if not impossible. The identity of the members of the Class is
19 readily ascertainable by review of Defendant's records, including payroll records. Plaintiff is
20 informed and believes, and based thereon alleges, that Defendant failed to provide accurate
21 itemized wage statements to employees in violation of Labor Code section 226.

22 18. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
23 necessary steps to represent fairly and adequately the interests of the Class defined above.
24 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and
25 Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past
26 and currently have a number of wage-and-hour class actions pending in California state and
27 federal courts.

28 19. Defendant uniformly administered a corporate policy, practice of failing to

1 provide accurate itemized wage statements to Plaintiff and the Class in violation of Labor Code
2 section 226.

3 20. **Common Question of Law and Fact:** There are predominant common questions
4 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
5 concerning Defendant's policy and practice of failing to provide proper wage statements to
6 Plaintiff and the Class in violation of Labor Code section 226.

7 21. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
8 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
9 as the Class Members. As with other California non-exempt employees, Plaintiff was not
10 provided proper and accurate itemized wage statements, in violation of Labor Code section
11 226(a). Specifically, whenever overtime wages were paid, the corresponding wage statements
12 did not identify the overtime rate. Instead, the wage statements only identified the base rate of
13 pay. Accordingly, Plaintiff is a victim of Defendant's violation of California Labor Code section
14 226.

15 22. The California Labor Code section upon which Plaintiff bases these claims is
16 broadly remedial in nature. These laws and labor standards serve an important public interest in
17 establishing minimum working conditions and standards in California. These laws and labor
18 standards protect the average working employee from exploitation by employers who may seek
19 to take advantage of superior economic and bargaining power in setting onerous terms and
20 conditions of employment.

21 23. The nature of this action and the format of laws available to Plaintiff and
22 members of the Class identified herein make the class action format a particularly efficient and
23 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
24 file an individual lawsuit, the corporate defendants would necessarily gain an unconscionable
25 advantage since it would be able to exploit and overwhelm the limited resources of each
26 individual plaintiff with their vastly superior financial and legal resources. Requiring each Class
27 Member to pursue an individual remedy would also discourage the assertion of lawful claims by
28 employees who would be disinclined to file an action against their former and/or current

1 employer for real and justifiable fear of retaliation and permanent damage to their careers at
2 subsequent employment.

3 24. The prosecution of separate actions by the individual Class Members, even if
4 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
5 to individual Class Members against Defendants and which would establish potentially
6 incompatible standards of conduct for Defendants, and/or (b) adjudications with respect to
7 individual Class Members which would, as a practical matter, be dispositive of the interest of the
8 other Class Members not parties to the adjudications or which would substantially impair or
9 impede the ability of the Class Members to protect their interests. Further, the claims of the
10 individual members of the Class are not sufficiently large to warrant vigorous individual
11 prosecution considering all of the concomitant costs and expenses.

12 25. Such a pattern, practice and uniform administration of corporate policy regarding
13 illegal payroll practices described herein is unlawful and creates an entitlement to recovery by
14 Plaintiff and the Class identified herein, in a civil action, for applicable penalties, reasonable
15 attorneys' fees, and costs of suit according to the mandate of California Labor Code section 226
16 and Code of Civil Procedure section 1021.5.

17 26. Proof of a common business practice or factual pattern, which the named Plaintiff
18 experienced and is representative of, will establish the right of each of the members of the
19 Plaintiff Class to recovery on the causes of action alleged herein.

20 **FIRST CAUSE OF ACTION**

21 **VIOLATION OF LABOR CODE § 226**

22 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

23 27. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 26 as
24 though fully set forth herein.

25 28. Defendant failed in its affirmative obligation to provide accurate itemized wage
26 statements. Defendant, as a matter of policy and practice, did not provide accurate records in
27 violation of Labor Code section 226(a).

28 29. Plaintiff and Class Members were paid on an hourly basis. As such, the wage

1 statements provided to them should have reflected all applicable hourly rates in effect during the
2 pay period. The wage statements provided to Plaintiff and the Class failed to accurately identify
3 such information. More specifically, whenever overtime wages were paid to Class Members, the
4 corresponding wage statement did not identify the overtime rate. Instead, the wage statements
5 only identified the base rate of pay.

6 30. Such a pattern, practice and uniform administration of corporate policy as
7 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class
8 identified herein in a civil action, for all penalties pursuant to Labor Code section 226, including
9 interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor
10 Code section 226.

11 **SECOND CAUSE OF ACTION**

12 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

13 **(BY PLAINTIFF, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,**
14 **AGAINST ALL DEFENDANTS)**

15 31. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 30 as
16 though fully set forth herein.

17 32. Plaintiff brings this cause of action as a proxy for the State of California and in
18 this capacity, seeks penalties on behalf of all Aggrieved Employees from January 8, 2019,
19 through the present, for Defendant's policy and practice of failing to provide proper wage
20 statements in violation of Labor Code section 226(a).

21 33. On or about January 8, 2020, Plaintiff sent written notice to the California Labor
22 & Workforce Development Agency ("LWDA") of Defendant's violations of Labor Code section
23 226(a), pursuant to Labor Code section 2698, *et seq.*, the Private Attorney General Act
24 ("PAGA"). To date, the LWDA has not responded to Plaintiff's written notice.

25 34. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
26 and all applicable civil penalties for Defendant's violation of Labor Code section 226(a) for the
27 time period described above, on behalf of himself and other Aggrieved Employees.

28 **PRAYER FOR RELIEF**

1 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf
2 this suit is brought against Defendants, jointly and severally, as follows:

- 3 1. For an order certifying the proposed Class;
- 4 2. For an order appointing Plaintiff as the representative of the Class;
- 5 3. For an order appointing counsel for Plaintiff as Class Counsel;
- 6 4. Upon the First Cause of Action, for penalties pursuant to California Labor Code
7 section 226, and for costs and attorneys' fees;
- 8 5. Upon the Second Cause of Action, for civil penalties according to proof pursuant
9 to Labor Code section 2698, *et seq.*, and for costs and attorneys' fees;
- 10 6. On all causes of action for attorneys' fees and costs as provided by California
11 Labor Code sections 226 and 2699, and Code of Civil Procedure section 1021.5; and
- 12 7. For such other and further relief the Court may deem just and proper.

13
14 DATED: January 28, 2020

DIVERSITY LAW GROUP, P.C.

15
16 By: _____

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff and the Class
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28

EXHIBIT C

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Attorneys for Defendant
THE F.A. BARTLETT TREE EXPERT COMPANY INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SONOMA

ARRON STANFIELD, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

v.

Case No.: SCV-265929

**STIPULATION AND PROTECTIVE
ORDER; [PROPOSED] ORDER**

1 THE F.A. BARTLETT TREE EXPERT
2 COMPANY, a Connecticut corporation; and
3 DOES 1 through 50, inclusive,

4 Defendants.

7 **IT IS HEREBY STIPULATED** by and between the parties to Arron Stanfield et al. v.
8 The F.A. Bartlett Tree Expert Company, et al, (the “Parties”), by and through their respective
9 counsel of record, that in order to facilitate the exchange of information and documents which
10 may be subject to confidentiality limitations on disclosure due to federal laws, state laws, and
11 privacy rights, the Parties stipulate as follows:

12 1. In this Stipulation and Protective Order, the words set forth below shall have the
13 following meanings:

14 a. “Proceeding” means the above-entitled proceeding, *Arron Stanfield et al.*
15 *v. The F.A. Bartlett Tree Expert Company et al*, Case No. SCV-265929, pending before the
16 Superior Court of California, County of Sonoma.

17 b. “Court” means the Hon. Patrick M. Broderick, or any other judge to
18 which this Proceeding may be assigned, including Court staff participating in such proceedings.

19 c. “Confidential” means any Documents, Testimony, or Information which
20 is in the possession of a Designating Party who believes in good faith that such Documents,
21 Testimony, or Information is entitled to confidential treatment under applicable law.

22 d. “Confidential Materials” means any Documents, Testimony, or
23 Information as defined below designated as “Confidential” pursuant to the provisions of this
24 Stipulation and Protective Order.

25 e. “Highly Confidential” means any information which belongs to a
26 Designating Party who believes in good faith that the Disclosure of such information to another
27
28

1 Party or non-Party would create a substantial risk of serious financial or other injury that cannot
2 be avoided by less restrictive means.

3 f. “Highly Confidential Materials” means any Documents, Testimony, or
4 Information, as defined below, designated as “Highly Confidential” pursuant to the provisions
5 of this Stipulation and Protective Order.
6

7 g. “Designating Party” means the Party that designates Documents,
8 Testimony, or Information, as defined below, as “Confidential” or “Highly Confidential.”

9 h. “Disclose” or “Disclosed” or “Disclosure” means to reveal, divulge, give,
10 or make available Materials, or any part thereof, or any information contained therein.

11 i. “Documents” means (i) any “Writing,” “Original,” and “Duplicate” as
12 those terms are defined by California Evidence Code Sections 250, 255, and 260, which have
13 been produced in discovery in this Proceeding by any person or entity, and (ii) any copies,
14 reproductions, or summaries of all or any part of the foregoing.

15 j. “Information” means the content of Documents or Testimony.

16 k. “Testimony” means all depositions, declarations, or other testimony taken
17 or used in this Proceeding.

18 2. The Designating Party shall have the right to designate as “Highly Confidential”
19 only the non-public Documents, Testimony, or Information that the Designating Party in good
20 faith believes would create a substantial risk of serious financial or other injury, if Disclosed to
21 another Party or non-Party, and that such risk cannot be avoided by less restrictive means.

22 3. The entry of this Stipulation and Protective Order does not alter, waive, modify,
23 or abridge any right, privilege, or protection otherwise available to any Party with respect to the
24 discovery of matters, including but not limited to any Party’s right to assert the attorney-client
25 privilege, the attorney work product doctrine, or other privileges, or any Party’s right to contest
26 any such assertion.
27
28

1 4. Any Documents, Testimony, or Information to be designated as “Confidential”
2 or “Highly Confidential” must be clearly so designated before the Document, Testimony, or
3 Information is Disclosed or produced. The parties may agree that a case name and number are to
4 be part of the “Highly Confidential” designation. The “Confidential” or “Highly Confidential”
5 designation should not obscure or interfere with the legibility of the designated Information.
6

7 a. For Documents (apart from transcripts of depositions or other pretrial or
8 trial proceedings), the Designating Party must affix the legend “Confidential” or “Highly
9 Confidential” on each page of any Document containing such designated material.

10 b. For Testimony given in depositions the Designating Party may either:

11 i. identify on the record, before the close of the deposition, all
12 “Confidential” or “Highly Confidential” Testimony, by specifying all portions of the Testimony
13 that qualify as “Confidential” or “Highly Confidential;” or

14 ii. designate the entirety of the Testimony at the deposition as
15 “Confidential” or “Highly Confidential” (before the deposition is concluded) with the right to
16 identify more specific portions of the Testimony as to which protection is sought within 30 days
17 following receipt of the deposition transcript. In circumstances where portions of the deposition
18 Testimony are designated for protection, the transcript pages containing “Confidential” or
19 “Highly Confidential” Information may be separately bound by the court reporter, who must
20 affix to the top of each page the legend “Confidential” or “Highly Confidential,” as instructed
21 by the Designating Party.
22

23 c. For Information produced in some form other than Documents, and for
24 any other tangible items, including, without limitation, compact discs or DVDs, the Designating
25 Party must affix in a prominent place on the exterior of the container or containers in which the
26 Information or item is stored the legend “Confidential” or “Highly Confidential.” If only
27 portions of the Information or item warrant protection, the Designating Party, to the extent
28 practicable, shall identify the “Confidential” or “Highly Confidential” portions.

1 5. The inadvertent production by any of the undersigned Parties or non-Parties to
2 the Proceedings of any Document, Testimony, or Information during discovery in this
3 Proceeding without a “Confidential” or “Highly Confidential” designation, shall be without
4 prejudice to any claim that such item is “Confidential” or “Highly Confidential” and such Party
5 shall not be held to have waived any rights by such inadvertent production. In the event that any
6 Document, Testimony, or Information that is subject to a “Confidential” or “Highly
7 Confidential” designation is inadvertently produced without such designation, the Party that
8 inadvertently produced the document shall give written notice of such inadvertent production
9 within twenty (20) days of discovery of the inadvertent production, together with a further copy
10 of the subject Document, Testimony, or Information designated as “Confidential” or “Highly
11 Confidential” (the “Inadvertent Production Notice”). Upon receipt of such Inadvertent
12 Production Notice, the Party that received the inadvertently produced Document, Testimony, or
13 Information shall promptly destroy the inadvertently produced Document, Testimony, or
14 Information and all copies thereof, or, at the expense of the producing Party, return such
15 together with all copies of such Document, Testimony or Information to counsel for the
16 producing Party and shall retain only the “Confidential” or “Highly Confidential” materials.
17 Should the receiving Party choose to destroy such inadvertently produced Document,
18 Testimony, or Information, the receiving Party shall notify the producing Party in writing of
19 such destruction within ten (10) days of receipt of written notice of the inadvertent production.
20 This provision is not intended to apply to any inadvertent production of any Document,
21 Testimony, or Information protected by attorney-client or work product privileges. In the event
22 that this provision conflicts with any applicable law regarding waiver of confidentiality through
23 the inadvertent production of Documents, Testimony or Information, such law shall govern.
24

25 6. In the event that counsel for a Party receiving Documents, Testimony or
26 Information in discovery designated as “Confidential” or “Highly Confidential” objects to such
27 designation with respect to any or all of such items, said counsel shall advise counsel for the
28

1 Designating Party, in writing, of such objections, the specific Documents, Testimony or
2 Information to which each objection pertains, and the specific reasons and support for such
3 objections (the “Designation Objections”). Counsel for the Designating Party shall have thirty
4 (30) days from receipt of the written Designation Objections to either (a) agree in writing to de-
5 designate Documents, Testimony, or Information pursuant to any or all of the Designation
6 Objections and/or (b) file a motion with the Court seeking to uphold any or all designations on
7 Documents, Testimony, or Information addressed by the Designation Objections (the
8 “Designation Motion”). Pending a resolution of the Designation Motion by the Court, any and
9 all existing designations on the Documents, Testimony, or Information at issue in such Motion
10 shall remain in place. The Designating Party shall have the burden on any Designation Motion
11 of establishing the applicability of its “Confidential” or “Highly Confidential” designation. In
12 the event that the Designation Objections are neither timely agreed to nor timely addressed in
13 the Designation Motion, then such Documents, Testimony, or Information shall be de-
14 designated in accordance with the Designation Objection applicable to such material.
15

16 7. Access to and/or Disclosure of Confidential Materials shall be permitted only to
17 the following persons or entities:

- 18 a. the Court;
- 19 b. (1) Attorneys of record in the Proceeding and their affiliated attorneys,
20 paralegals, clerical and secretarial staff employed by such attorneys who are actively involved
21 in the Proceeding and are not employees of any Party; (2) In-house counsel to the undersigned
22 Parties and the paralegal, clerical and secretarial staff employed by such counsel. Provided,
23 however, that each non-lawyer given access to Confidential Materials shall be advised that such
24 materials are being Disclosed pursuant to, and are subject to, the terms of this Stipulation and
25 Protective Order and that they may not be Disclosed other than pursuant to its terms;
- 26 c. those officers, directors, partners, members, employees and agents of all
27 non-designating Parties that counsel for such Parties deems necessary to aid counsel in the
28

1 prosecution and defense of this Proceeding; provided, however, that prior to the Disclosure of
2 Confidential Materials to any such officer, director, partner, member, employee or agent,
3 counsel for the Party making the Disclosure shall deliver a copy of this Stipulation and
4 Protective Order to such person, shall explain that such person is bound to follow the terms of
5 such Order, and shall secure the signature of such person on a statement in the form attached
6 hereto as Exhibit A;

7
8 d. court reporters in this Proceeding (whether at depositions, hearings, or
9 any other proceeding);

10 e. any deposition, trial, or hearing witness in the Proceeding who previously
11 has had access to the Confidential Materials, or who is currently or was previously an officer,
12 director, partner, member, employee or agent of an entity that has had access to the Confidential
13 Materials;

14 f. any deposition or non-trial hearing witness in the Proceeding who
15 previously did not have access to the Confidential Materials; provided, however, that each such
16 witness given access to Confidential Materials shall be advised that such materials are being
17 Disclosed pursuant to, and are subject to, the terms of this Stipulation and Protective Order and
18 that they may not be Disclosed other than pursuant to its terms;

19 g. mock jury participants, provided, however, that prior to the Disclosure of
20 Confidential Materials to any such mock jury participant, counsel for the Party making the
21 Disclosure shall deliver a copy of this Stipulation and Protective Order to such person, shall
22 explain that such person is bound to follow the terms of such Order, and shall secure the
23 signature of such person on a statement in the form attached hereto as Exhibit A.

24 h. outside experts or expert consultants consulted by the undersigned Parties
25 or their counsel in connection with the Proceeding, whether or not retained to testify at any oral
26 hearing; provided, however, that prior to the Disclosure of Confidential Materials to any such
27 expert or expert consultant, counsel for the Party making the Disclosure shall deliver a copy of
28

1 this Stipulation and Protective Order to such person, shall explain its terms to such person, and
2 shall secure the signature of such person on a statement in the form attached hereto as Exhibit
3 A. It shall be the obligation of counsel, upon learning of any breach or threatened breach of this
4 Stipulation and Protective Order by any such expert or expert consultant, to promptly notify
5 counsel for the Designating Party of such breach or threatened breach; and
6

7 i. any other person or entity that the Designating Party agrees to in
8 writing.

9 8. Access to and/or Disclosure of Highly Confidential Materials shall be permitted
10 only to the following persons or entities:

11 a. Trial Counsel for the Parties, their partners and associates, and staff and
12 supporting personnel of such attorneys, such as paralegal assistants, secretarial, stenographic
13 and clerical employees and contractors, and outside copying services, who are working on this
14 Proceeding (or any further proceedings herein) under the direction of such attorneys and to
15 whom it is necessary that the Highly Confidential Materials be Disclosed for purposes of this
16 Proceeding. Such employees, assistants, contractors and agents to whom such access is
17 permitted and/or Disclosure is made shall, prior to such access or Disclosure, be advised of, and
18 become subject to, the provisions of this Protective Order. "Trial Counsel," for purposes of this
19 Paragraph, shall mean outside retained counsel and shall not include in-house counsel to the
20 undersigned Parties and the paralegal, clerical and secretarial staff employed by such in-house
21 counsel;
22

23 b. outside experts or expert consultants consulted by the undersigned Parties
24 or their counsel in connection with the Proceeding, whether or not retained to testify at any oral
25 hearing; provided, however, that prior to the Disclosure of Highly Confidential Materials to any
26 such expert or expert consultant, counsel for the Party making the Disclosure shall deliver a
27 copy of this Stipulation and Protective Order to such person, shall explain its terms to such
28 person, and shall secure the signature of such person on a statement in the form attached hereto

1 as Exhibit A prior to the Disclosure of Highly Confidential Materials. It shall be the obligation
2 of Trial Counsel, upon learning of any breach or threatened breach of this Stipulation and
3 Protective Order by any such expert or expert consultant, to promptly notify Trial Counsel for
4 the Designating Party of such breach or threatened breach;

5
6 c. any person who authored, received, saw or was otherwise familiar with
7 Documents, Testimony, or Information or thing designated "Highly Confidential," including
8 any person otherwise familiar with the Highly Confidential Information contained therein, but
9 only to the extent of that person's prior familiarity with the Highly Confidential Information;

10 d. court reporters in this Proceeding (whether at depositions, hearings, or
11 any other proceeding); and

12 e. the Court.

13 9. Confidential Materials and Highly Confidential Materials shall be used by the
14 persons or entities receiving them only for the purposes of preparing for, conducting,
15 participating in the conduct of, and/or prosecuting and/or defending the Proceeding, and not for
16 any business or other purpose whatsoever.

17 10. Any Party to the Proceeding (or other person subject to the terms of this
18 Stipulation and Protective Order) may ask the Court, after appropriate notice to the other Parties
19 to the Proceeding, to modify or grant relief from any provision of this Stipulation and Protective
20 Order.

21 11. Entering into, agreeing to, and/or complying with the terms of this Stipulation
22 and Protective Order shall not:

23
24 a. operate as an admission by any person that any particular Document,
25 Testimony, or Information marked "Confidential" or "Highly Confidential" contains or reflects
26 trade secrets, proprietary, confidential or competitively sensitive business, commercial,
27 financial or personal information; or

28 b. prejudice in any way the right of any Party (or any other person subject to

1 the terms of this Stipulation and Protective Order):

2 i. to seek a determination by the Court of whether any particular
3 Confidential Materials or Highly Confidential Materials should be subject to protection under
4 the terms of this Stipulation and Protective Order; or

5 ii. to seek relief from the Court on appropriate notice to all other
6 Parties to the Proceeding from any provision(s) of this Stipulation and Protective Order, either
7 generally or as to any particular Document, Material or Information.
8

9 12. Any Party to the Proceeding who has not executed this Stipulation and Protective
10 Order as of the time it is presented to the Court for signature may thereafter become a Party to
11 this Stipulation and Protective Order by its counsel's signing and dating a copy thereof and
12 filing the same with the Court, and serving copies of such signed and dated copy upon the other
13 Parties to this Stipulation and Protective Order.

14 13. Any Information that may be produced by a non-Party witness in discovery in
15 the Proceeding pursuant to subpoena or otherwise may be designated by such non-Party as
16 "Confidential" or "Highly Confidential" under the terms of this Stipulation and Protective
17 Order, and any such designation by a non-Party shall have the same force and effect, and create
18 the same duties and obligations, as if made by one of the undersigned Parties hereto. Any such
19 designation shall also function as consent by such producing non-Party to the authority of the
20 Court in the Proceeding to resolve and conclusively determine any motion or other application
21 made by any person or Party with respect to such designation, or any other matter otherwise
22 arising under this Stipulation and Protective Order.
23

24 14. If any person subject to this Stipulation and Protective Order who has custody of
25 any Confidential Materials or Highly Confidential Materials receives a subpoena or other
26 process ("Subpoena") from any government or other person or entity demanding production of
27 such materials, the recipient of the Subpoena shall promptly give notice of the same by
28 electronic mail transmission, followed by either express mail or overnight delivery to counsel of

1 record for the Designating Party, and shall furnish such counsel with a copy of the Subpoena.
2 Upon receipt of this notice, the Designating Party may, in its sole discretion and at its own cost,
3 move to quash or limit the Subpoena, otherwise oppose production of the Confidential Materials
4 or Highly Confidential Materials, and/or seek to obtain confidential treatment of such materials
5 from the subpoenaing person or entity to the fullest extent available under law. The recipient of
6 the Subpoena may not produce any Confidential Materials or Highly Confidential Materials
7 pursuant to the Subpoena prior to the date specified for production on the Subpoena.
8

9 15. Nothing in this Stipulation and Protective Order shall be construed to preclude
10 either Party from asserting in good faith that certain Confidential Materials or Highly
11 Confidential Materials require additional protection. The Parties shall meet and confer to agree
12 upon the terms of such additional protection.

13 16. If, after execution of this Stipulation and Protective Order, any Confidential
14 Materials or Highly Confidential Materials submitted by a Designating Party under the terms of
15 this Stipulation and Protective Order is Disclosed by a non-Designating Party to any person
16 other than in the manner authorized by this Stipulation and Protective Order, the non-
17 Designating Party responsible for the Disclosure shall bring all pertinent facts relating to the
18 Disclosure of such Confidential Materials or Highly Confidential Materials to the immediate
19 attention of the Designating Party.
20

21 17. This Stipulation and Protective Order is entered into without prejudice to the
22 right of any Party to knowingly waive the applicability of this Stipulation and Protective Order
23 to any Confidential Materials or Highly Confidential Materials designated by that Party. If the
24 Designating Party uses Confidential Materials or Highly Confidential Materials in a non-
25 Confidential manner, then the Designating Party shall advise that the designation no longer
26 applies.

27 18. Where any Confidential Materials or Highly Confidential Materials, or
28 Information derived therefrom, is included in any motion or other proceeding governed by

1 California Rules of Court, Rules 2.550 and 2.551, the Parties and any involved non-party shall
2 follow those rules. With respect to discovery motions or other proceedings not governed by
3 California Rules of Court, Rules 2.550 and 2.551, the following shall apply: If Confidential
4 Materials, Highly Confidential Materials, or Information derived therefrom are submitted to or
5 otherwise disclosed to the Court in connection with discovery motions and proceedings, the
6 same shall be separately filed under seal with the clerk of the Court in an envelope marked:
7 “CONFIDENTIAL – FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER AND
8 WITHOUT ANY FURTHER SEALING ORDER REQUIRED.”
9

10 19. The Parties shall meet and confer regarding the procedures for use of any
11 Confidential Materials or Highly Confidential Materials at trial and shall move the Court for
12 entry of an appropriate order.

13 20. Nothing in this Stipulation and Protective Order shall affect the admissibility into
14 evidence of Confidential Materials or Highly Confidential Materials, or abridge the rights of
15 any person to seek judicial review or to pursue other appropriate judicial action with respect to
16 any ruling made by the Court concerning the issue of the status of any Confidential Materials or
17 Highly Confidential Materials.

18 21. This Stipulation and Protective Order shall continue to be binding after the
19 conclusion of this Proceeding and all subsequent proceedings arising from this Proceeding,
20 except that a Party may seek the written permission of the Designating Party or may move the
21 Court for relief from the provisions of this Stipulation and Protective Order. To the extent
22 permitted by law, the Court shall retain jurisdiction to enforce, modify, or reconsider this
23 Stipulation and Protective Order, even after the Proceeding is terminated.
24

25 22. Upon written request made within thirty (30) days after the settlement or other
26 termination of the Proceeding, the undersigned Parties shall have thirty (30) days to either (a)
27 promptly return to counsel for each Designating Party all Confidential Materials and Highly
28 Confidential Materials, and all copies thereof (except that counsel for each Party may maintain

1 in its files, in continuing compliance with the terms of this Stipulation and Protective Order, all
2 work product, and one copy of each pleading filed with the Court and one copy of each
3 deposition together with the exhibits marked at the deposition), (b) agree with counsel for the
4 Designating Party upon appropriate methods and certification of destruction or other disposition
5 of such materials, or (c) as to any Documents, Testimony, or other Information not addressed by
6 sub-paragraphs (a) and (b), file a motion seeking a Court order regarding proper preservation of
7 such Materials. To the extent permitted by law the Court shall retain continuing jurisdiction to
8 review and rule upon the motion referred to in sub-paragraph (c) herein.
9

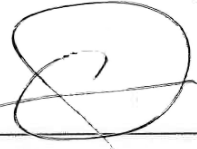
10 23. After this Stipulation and Protective Order has been signed by counsel for all
11 Parties, it shall be presented to the Court for entry. Counsel agree to be bound by the terms set
12 forth herein with regard to any Confidential Materials or Highly Confidential Materials that
13 have been produced before the Court signs this Stipulation and Protective Order.

14 24. The Parties and all signatories to the Certification attached hereto as Exhibit A
15 agree to be bound by this Stipulation and Protective Order pending its approval and entry by the
16 Court. In the event that the Court modifies this Stipulation and Protective Order, or in the event
17 that the Court enters a different Protective Order, the Parties agree to be bound by this
18 Stipulation and Protective Order until such time as the Court may enter such a different Order.
19 It is the Parties' intent to be bound by the terms of this Stipulation and Protective Order pending
20 its entry so as to allow for immediate production of Confidential Materials and Highly
21 Confidential Materials under the terms herein.
22

23
24 This Stipulation and Protective Order may be executed in counterparts.
25
26
27
28

1 Dated: October 22, 2020

DIVERSITY LAW GROUP, P.C.

2
3 By: 

4 Larry W. Lee
5 Kristen M. Agnew
6 Nicholas Rosenthal
7 Attorneys for Plaintiff Arron Stanfield

8 Dated: October 22, 2020

POLARIS LAW GROUP LLP

9
10 By: 

11 William L. Marder
12 Attorneys for Plaintiff Arron Stanfield

13 Dated: October 21, 2020

FORD & HARRISON, LLP

14
15
16
17 By: 

18 David L. Cheng, Esq.
19 Daniel R. Lyman, Esq.
20 Attorneys for Defendant The F.A. Bartlett Tree
21 Expert Company, Inc.
22
23
24
25
26
27
28

ORDER

GOOD CAUSE APPEARING, the Court hereby approves this Stipulation and Protective Order.

IT IS SO ORDERED.

Dated: _____

THE HONORABLE PATRICK M. BRODERICK

1 **EXHIBIT A**

2
3 **CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS**

4
5 I hereby acknowledge that I, _____[NAME],
6 _____ [POSITION AND EMPLOYER], am
7 about to receive Confidential Materials and/or Highly Confidential Materials supplied in
8 connection with the Proceeding, *Arron Stanfield et al. v. The F.A. Bartlett Tree Expert*
9 *Company et al*, Case No. SCV-265929, pending before the Superior Court of California, County
10 of Sonoma. I certify that I understand that the Confidential Materials and/or Highly Confidential
11 Materials are provided to me subject to the terms and restrictions of the Stipulation and
12 Protective Order filed in this Proceeding. I have been given a copy of the Stipulation and
13 Protective Order; I have read it, and I agree to be bound by its terms.
14

15 I understand that the Confidential Materials and Highly Confidential Materials, as
16 defined in the Stipulation and Protective Order, including any notes or other records that may be
17 made regarding any such materials, shall not be Disclosed to anyone except as expressly
18 permitted by the Stipulation and Protective Order. I will not copy or use, except solely for the
19 purposes of this Proceeding, any Confidential Materials or Highly Confidential Materials
20 obtained pursuant to this Stipulation and Protective Order, except as provided therein or
21 otherwise ordered by the Court in the Proceeding.
22

23 I further understand that I am to retain all copies of all Confidential Materials and
24 Highly Confidential Materials provided to me in the Proceeding in a secure manner, and that all
25 copies of such materials are to remain in my personal custody until termination of my
26 participation in this Proceeding, whereupon the copies of such materials will be returned to
27 counsel who provided me with such materials.
28

1 I declare under penalty of perjury, under the laws of the State of California, that the
2 foregoing is true and correct. Executed this _____ day of _____, 20__, at
3

4 _____.

5 DATED: _____

6 BY:

Signature

Title

Address

City, State, Zip

Telephone Number