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**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]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: TBD
Time: TBD
Dept.: 16

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

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on a date to be set by the Clerk, or as soon thereafter as
3 the matter may be heard, before the Honorable Patrick Broderick, judge presiding, in Department
4 16 of the above referenced Court, located at 3035 Cleveland Avenue, Santa Rosa, California
5 95403, Plaintiff Arron Stanfield (“Plaintiff”) will and hereby does move this Court for the
6 following relief with respect to the Joint Stipulation of Class and Representative Action
7 Settlement (“Joint Stipulation” or “Settlement Agreement”) entered into by Plaintiff and
8 Defendant The F.A. Bartlett Tree Expert Company, Inc. (“Defendant”) (together with Plaintiff,
9 the “Parties”):

10 1. That the Court approve the Stipulation referenced above;

11 2. That the Court conditionally certify the following Class for settlement purposes
12 only: all current or former non-exempt employees of Defendant in the State of California who
13 were paid overtime wages during the period of April 1, 2019 through October 3, 2019 (the
14 “Class”);

15 3. That Plaintiff Arron Stanfield be appointed as the Class Representative and Larry
16 W. Lee, Kristen M. Agnew, and Nicholas Rosenthal of Diversity Law Group, P.C., and William
17 L. Marder of Polaris Law Group LLP, be appointed as Class Counsel;

18 4. That the Court preliminarily approve the Stipulation and the total Gross
19 Settlement Amount in the amount of Two Hundred Twenty-Two Thousand Five Hundred
20 Dollars and Zero Cents (\$222,500.00);

21 5. That the Court finds on a preliminary basis that the Stipulation appears to be
22 within the range of reasonableness of a settlement, including the amount of the PAGA penalties,
23 the allocation of payments to Settlement Class Members, the Enhancement Payment to Plaintiff,
24 Class Counsel Award and Settlement Administration Costs, that could ultimately be given final
25 approval by this Court;

26 6. That the Court approve the mailing of the proposed Notice of Proposed Class
27 Action Settlement (“Class Notice”) to be sent to Class Members;

28 7. That the Court appoint Simpluris, Inc. as the Settlement Administrator; and

1 8. That the Court schedule the matter for a Final Fairness and Final Approval
2 hearing.

3 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
4 provides for court approval of the settlement of a purported class action and allows the Court to
5 preliminarily certify a class for settlement purposes.

6 The basis for this unopposed Motion is that the proposed settlement is fair, adequate, and
7 reasonable, and the procedures proposed by the Parties are adequate to ensure the opportunity of
8 Class Members to participate in, opt-out of, or object to the settlement.

9 This Motion will be based on the attached Memorandum of Points and Authorities, the
10 Settlement Agreement and the proposed Class Notice, and the supporting Declarations of Larry
11 W. Lee, Kristen M. Agnew, Nicholas Rosenthal, William L. Marder, and Plaintiff Arron
12 Stanfield, upon the oral arguments of counsel (should there be any), and on the complete records
13 and file herein.

14
15 DATED: October 30, 2020

DIVERSITY LAW GROUP, P.C.

16
17 By: _____

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff and the Class
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1 **I. INTRODUCTION**

2 Plaintiff Arron Stanfield (“Plaintiff”) brings class and representative Private Attorneys
3 General Act (“PAGA”) claims against Defendant The F.A. Bartlett Tree Expert Company, Inc.
4 (“Defendant”) under the California Labor Code (Plaintiff and Defendant shall be jointly referred
5 to as the “Parties”). Plaintiff alleges in this lawsuit that Defendant failed to provide accurate
6 itemized wage statements to its employees. Specifically, Plaintiff contends that Defendant failed
7 to specify the correct rate of pay for overtime wages on wage statements issued by Defendant to
8 its employees. Based on this violation, Plaintiff asserts class and PAGA claims for violation of
9 Labor Code section 226(a) (9).

10 Prior to the settlement of this action, the Parties thoroughly investigated the facts relating
11 to the class and PAGA claims alleged in the Complaint and engaged in a thorough study of the
12 legal principles applicable to the claims asserted against Defendant. Through the exchange of
13 informal discovery in advance of mediation, Defendant provided necessary data pertaining to the
14 number of putative class members and the number of wage statements at issue, as well as
15 information pertaining to Defendant’s wage statement policies and practices. Thereafter, the
16 Parties attended a full day of private mediation with Tripper Ortman, Esq., and after further
17 extended negotiations, the Parties reached the current settlement. The terms of the Settlement
18 Agreement provide that Defendant pay a Gross Settlement Amount of Two Hundred Twenty-
19 Two Thousand Five Hundred Dollars (\$222,500.00) to resolve the class and PAGA claims.
20 Significantly, the entire Gross Settlement Amount will be distributed to the class on a **non-**
21 **reversionary** basis, such that no remaining monies will revert to Defendant. Further, no
22 claim forms are required.

23 The Parties and their respective counsel believe that the settlement for the consideration
24 and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate, in light
25 of all known circumstances and the expenses and risks inherent in litigation. Although Plaintiff
26 and his counsel are confident that they can prevail on class certification, as well as on the merits,
27 they recognize the inherent risks in drawn-out litigation and the specific risks that a class might
28 not be certified and/or that Plaintiff could fail to establish liability.

Therefore, the Parties respectfully request that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

II. PROCEDURAL HISTORY

A. The Allegations Set Forth in the PAGA Notice and Complaint.

On January 8, 2020, Plaintiff submitted his written notice under Labor Code section 2699.3 (the “PAGA Notice”) to the LWDA and Defendant. Declaration of Kristen M. Agnew (“Agnew Decl.”) at ¶ 3. 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. *Id.* 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. *Id.* Rather, Plaintiff alleges that the wage statements only identified the base rate of pay. *Id.*

On January 28, 2020, Plaintiff filed the Complaint in this Action in the Sonoma County Superior Court. Agnew Decl. at ¶ 4. 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. *Id.* Plaintiff seeks statutory and civil penalties under the California Labor Code and the PAGA, as well as attorneys’ fees and costs. *Id.*

B. The Action Overlaps With the *Magna* Class Action Settlement.

Subsequent to the filing of the lawsuit, defense counsel informed Class Counsel 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. Agnew Decl. at ¶ 5. 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. *Id.*

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

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

11 **C. The Parties Participate in Private Mediation.**

12 On May 19, 2020, the Parties agreed to attempt to resolve this matter through private
13 mediation. Agnew Decl. at ¶ 8. In advance of the mediation, the Parties engaged in informal
14 discovery, which allowed Plaintiff to conduct a full damage analysis. *Id.* Defendant provided
15 informal data and information pertaining to the putative class size, the number of aggrieved
16 employees, the number of wage statements at issue, and information regarding Defendant's wage
17 statement policies and practices. *Id.*

18 On June 26, 2020, the Parties participated in an all-day mediation session with neutral
19 Tripper Ortman, Esq. Agnew Decl. at ¶¶ 9-13. After a full day of negotiation facilitated by the
20 mediator, and further exchange of information and data, the Parties were able to reach an
21 agreement for settlement and the key terms. *Id.* at 13.

22 **D. Summary of the Proposed Settlement.**

23 The material terms of the settlement are memorialized in the Joint Stipulation of Class
24 and Representative Action Settlement ("Joint Stipulation" or "Settlement Agreement"), a true
25 and correct copy of which is attached as **Exhibit 1** to the Declaration of Kristen M. Agnew.

26 The proposed Class consists of "all current or former non-exempt employees of
27 Defendant in the State of California who were paid overtime wages during the Class Period
28

1 [April 1, 2019 through October 3, 2019]. Joint Stip. § I-3.¹ Based upon Defendant's records, the
2 estimated number of Class Members is approximately 148. Agnew Decl. at ¶¶ 15, 25. Class
3 Members received 2,135 wage statements reflecting the payment overtime wages during the
4 Class Period. Joint Stip. § III-A-39.

5 The Settlement Agreement provides for the Gross Settlement Amount of Two Hundred
6 Twenty-Two Thousand Five Hundred Dollars (\$222,500.00). Joint Stip. § I-14. The amount
7 allocated to each Class Member will be based on the number of pay periods in which the
8 employee received a wage statement for overtime wages during the Class Period. Joint Stip. §
9 III-A-44. This is fair, as it directly allocates greater recovery to individual Class Members who
10 have allegedly suffered greater harm. Agnew Decl. at ¶ 17.

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

16 As part of the Settlement Agreement, Defendant does not object to Plaintiff's Counsel's
17 request for attorney's fees up to thirty-three and one-third percent of the Gross Settlement
18 Amount, i.e. the sum of Seventy-Four Thousand One Hundred Sixty-Six Dollars and Sixty-Six
19 Cents (\$74,166.66), plus up to Fifteen Thousand Dollars (\$15,000.00) for reimbursement of
20 actual litigation costs, subject to the Court finally approving this Settlement. Joint Stip. § I-7.
21 Also, as part of the Settlement Agreement, Defendant does not object to Plaintiff's request for
22 an Enhancement Payment of Ten Thousand Dollars (\$10,000.00). Joint Stip. § III-A-41. Both
23 Plaintiff and Class Counsel expressly acknowledge that the Court has final discretion in any fee
24 award or Class Representative Service Award. *See* Joint Stip. Joint Stip. §§ I-7, III-A-41.

25
26
27 ¹ For wage statements issued on or after October 4, 2019, the wage statements include the
28 overtime rate. Plaintiff's wage statements corroborate this correction. Agnew Decl. at ¶ 11.

1 Finally, the Settlement Agreement provides for the payment of the fees and expenses
2 reasonably incurred by the Settlement Administrator. Joint Stip. I-29. The Parties have received
3 a quote from Simpluris, Inc. for a fee of approximately Four Thousand Dollars (\$4,000) to
4 administer the settlement. *Id.* Any portion of the Settlement Administration Costs not used or
5 approved by the Court shall be added to the Net Settlement Amount. *Id.*

6 **III. THE PROPOSED SETTLEMENT WARRANTS COURT APPROVAL**

7 **A. Two-Step Approval Process.**

8 Any settlement of a class action lawsuit must be reviewed and approved by the Court.
9 This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final
10 review after notice has been distributed to the class members for their comment or objections.
11 The Manual for Complex Litigation (Third) § 30.41 states:

12 Approval of class action settlements involves a two-step process. First, counsel
13 submits the proposed terms of settlement and the court makes a preliminary
14 fairness evaluation. If the preliminary evaluation of the proposed settlement does
15 not disclose grounds to doubt its fairness or other obvious deficiencies, such as
16 unduly preferential treatment of class representatives or of segments of the class,
17 or excessive compensation for attorneys, and appears to fall within the range of
possible approval, the court should direct that notice ... be given to the class
members of a formal fairness hearing, at which arguments and evidence may be
presented in support of and in opposition to the settlement.

18 Thus, the preliminary approval by the trial court is simply a conditional finding that the
19 settlement appears to be within the range of acceptable settlements. As Professor Newberg
20 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference
21 concerning a tentative settlement proposal may vary. The court may find that the settlement
22 proposal contains some merit, is within the range of reasonableness required for a settlement
23 offer, or is presumptively valid subject only to any objections that may be raised at a final
24 hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed.
25 2002).

26 The procedures for the parties’ submission of a proposed settlement for preliminary
27 approval by the court also are discussed in 4 *Newberg on Class Actions*:
28

1 When the parties to an action reach a monetary settlement, they will usually
2 prepare and execute a joint stipulation of settlement, which is submitted to the
3 court for preliminary approval. The Joint Stipulation should set forth the central
4 terms of the agreement, including but not limited to, the amount of settlement,
form of payment, manner of determining the effective date of settlement and any
recapture clause.

5 *Id.* at § 11.24.

6 Here, the Parties have reached such an agreement and have submitted to this Court in
7 connection with this Motion a copy of the Settlement Agreement fully setting forth all terms of
8 the agreement reached by the Parties, which include, among other things, the method for
9 calculating the Class Members' individual settlement payments. *See* Agnew Decl. at ¶ 14, Ex. 1.

10 **B. The Settlement is Fair and Reasonable and Not the Result of Fraud or**
11 **Collusion.**

12 Courts presume the absence of fraud or collusion in the negotiation of settlement unless
13 evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars*
14 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In*
15 *re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their
16 judgment for that of the proponents, particularly where, as here, settlement has been reached
17 with the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms.*
18 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F. Supp.
19 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car*
20 *Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav.*
21 *& Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

22 While the recommendations of counsel proposing the settlement are not conclusive, the
23 Court can properly take them into account, particularly where, as here, they have been involved
24 in significant discovery and negotiations for some period of time, appear to be competent, have
25 experience with this type of litigation, and have exchanged substantial evidence from the
26 opposing party. *See Newberg on Class Actions, supra*, at § 11.47; *Nat'l Rural Telecomms. Coop.*,
27 221 F.R.D. at 528 (quoting *In re Paine Webber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125
28 (S.D.N.Y. 1997) ("[s]o long as the integrity of the arm's length negotiation process is preserved,

1 however, a strong initial presumption of fairness attaches to the proposed settlement...[citations]
2 and ‘great weight’ is accorded to the recommendations of counsel, who are most closely
3 acquainted with the facts of the underlying litigation”)).

4 Here, both Class Counsel and Defense Counsel have a great deal of experience in wage
5 and hour class action litigation. Agnew Decl. at ¶ 31. Class Counsel has been approved as class
6 counsel in a number of wage and hour class actions and have extensive litigation experience.
7 Agnew Decl. at ¶¶ 31, 36; Declaration of Larry W. Lee (“Lee Decl.”) at ¶¶ 4, 7, 8; Declaration of
8 William Marder (“Marder Decl.”) at ¶ 2, 11; Declaration of Nicholas Rosenthal (“Rosenthal
9 Decl.”) at ¶¶ 2, 7. Moreover, as discussed above, Class Counsel conducted a very extensive
10 investigation of the allegations involved in this case since its inception. Agnew Decl. at ¶¶ 8, 25-
11 29. Each side has apprised the other of their respective factual contentions, legal theories and
12 defenses, resulting in extensive arms’ length negotiations taking place among the Parties. *Id.* at
13 ¶¶ 8-13.

14 The settlement for each Class Member is fair, reasonable, and adequate, given the
15 inherent risks of litigation, including the substantial risks relative to class certification, and the
16 costs of pursuing such litigation. *See* Section III-C, *infra*. Despite the asserted fairness of the
17 settlement terms, as set forth in the Notice of Proposed Class Action Settlement, should any
18 Class Member wish to pursue his or her own case for the claims being released herein, each
19 Class Member has the right to submit a request for exclusion (*i.e.*, opt-out) from the settlement.
20 *See* Joint Stip., Ex. A. Moreover, as set forth in the Notice of Settlement, Class Members are
21 advised of their right to attend the final approval hearing and object to any of the terms contained
22 in the proposed Settlement Agreement. *See id.*

23 C. The Settlement Meets the *Kullar* Factors.

24 As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, a class action
25 settlement should be approved when the plaintiff has conducted sufficient discovery and the
26 settlement is reasonable in light of the strengths of the plaintiff’s claims. 168 Cal. App. 4th 116,
27 130, 133 (2008). As discussed herein, Class Counsel have conducted meaningful discovery and
28 investigation and, in light of the strength and weaknesses of the Class’ claims, counsel submits

1 that this settlement is fair pursuant to *Kullar*.

2 **1. Strengths and Weaknesses of the First Cause of Action for Violation**
3 **of Labor Code Section 226(a).**

4 Although Plaintiff believes that a class can be certified, Plaintiff also believes in the
5 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
6 involved in not prevailing on one or more of the theories alleged in the Complaint, the possibility
7 of non-certification and potential for appeals. Agnew Decl. at ¶¶ 26, 28, 30; Lee Decl. at ¶ 3;
8 Marder Decl. at ¶ 3; Rosenthal Decl. at ¶¶ 3, 4.

9 Further, some courts have ruled that a finding of liability for violation of Labor Code
10 section 226(a) requires that the plaintiff and class members demonstrate an “actual injury.”
11 Under this line of cases, an actual injury is shown where “there is a need for [] additional
12 documentation.” *Raines v. Coastal Pac. Food Distribs., Inc.*, 23 Cal. App.5th 667, 676 (2018)
13 (internal citations omitted); *see also Hernandez v. BCI Coca-Cola Bottling Co.*, 554 Fed. App’x
14 661, 662 (9th Cir. 2014) (finding that a wage statement does not violate Section 226(a) if “a
15 plaintiff employee can ascertain the required information by performing simple math, using
16 figures on the face of the wage statement”). Here, Defendant has emphatically argued that the
17 absence of a common “actual injury” serves as a barrier to class certification. Agnew Decl. at ¶
18 10.

19 Defendant, moreover, has argued that any alleged omission of information from the wage
20 statements was not a “knowing and intentional failure” by Defendant to comply with Labor Code
21 section 226(a), and penalties are therefore unwarranted. Agnew Decl. at ¶ 10; *see Harris v.*
22 *Vector Mktg. Corp.*, 656 F. Supp. 2d 1128, 1145--46 (N.D. Cal. 2009) (summary adjudication
23 warranted on Section 226(e) claim where dispute existed as to whether plaintiff was independent
24 contractor or employee and record lacked evidence that conduct was knowing or willful); *Woods*
25 *v. Vector Mktg. Corp.*, 2015 U.S. Dist. LEXIS 67303, at *8-*9, *12-*14 (N.D. Cal. May 22,
26 2015) (finding that when the defendant made a good faith claim that the employee was properly
27 classified as exempt its failure to provide accurate wage statements was not knowing and
28 intentional).

1 **2. Strengths and Weaknesses of the Second Cause of Action for PAGA**
2 **Penalties.**

3 For the purpose of PAGA liability, a plaintiff need not establish the “knowing and
4 intentional” and “injury” elements of section 226(e) to prevail. *See Lopez v. Friant & Associates,*
5 *LLC*, 15 Cal. App. 5th 773, 784-85 (2017). Nonetheless, the trial court has the discretion to
6 reduce PAGA civil penalties “if, based on the facts and circumstances of the particular case, to
7 do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”
8 *See* Cal. Labor Code § 2699(e)(2); *Delgado v. New Albertson's, Inc.*, 2010 WL 11507599 at *7
9 (C.D. Cal. March 15, 2010) (explaining that court’s discretion to reduce penalties under PAGA
10 protects defendants from unconstitutionally excessive penalties); *Carrington*, 30 Cal. App. 5th at
11 529 (affirming reduction of PAGA penalties where the trial court found the reduction was
12 warranted based on the employer’s “good faith attempts” to comply with the Labor Code and
13 “because the court found the violations were minimal”).²

14 Plaintiff further recognizes that Defendant could make a persuasive argument at trial that
15 the penalties herein should be substantially reduced. Agnew Decl. at ¶ 28. Thus, for comparison
16 purposes, the following are some examples of PAGA awards, which were awarded after an
17 actual trial. Just very recently, in the matter of *Magadia v. Wal-Mart Assocs. et al.*, while the trial
18 court imposed substantial PAGA penalties upon the defendant, such amount still represented
19 reductions of 67% and 80% of the potential PAGA penalties at issue. 384 F. Supp. 3d 1058,
20 1069 (N.D. Cal. 2019). Similarly, in *Fleming v. Covidien, Inc.*, while plaintiff ultimately
21 prevailed in a PAGA trial predicated on a violation of Labor Code section 226(a), the Court
22 assessed only 17% of the maximum penalties. 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug.
23 12, 2011). Likewise, in the matter of *Parr v. Golden State Overnight*, Judge Carville of the
24

25 _____
26 ² As the California Supreme Court and Courts of Appeal have held, the purpose of PAGA is not
27 to seek wages or recovery for the individual employees. *Arias v. Superior Court*, 46 Cal. 4th 969,
28 986 (2009) (holding that an action to recover civil penalties “is fundamentally a law enforcement
action designed to protect the public and **not** to benefit private parties”) (emphasis added);
Brown v. Ralphs Grocery Co., 197 Cal. App. 4th 489, 1499 (2011).

Alameda Superior Court assessed PAGA penalties upon the defendant of approximately 7% of the total maximum penalties—again, this was only after plaintiff had prevailed at trial. Agnew Decl. at ¶ 30.

3. The Maximum Penalties.

Based on the class data provided by Defendant, Plaintiff estimated that Defendant would face potential liability of up to approximately \$206,100 for Plaintiff’s class claims, pursuant to Labor Code section 226(e), if Plaintiff succeeded at trial. Agnew Decl. at ¶25. Plaintiff was able to estimate the potential damages and penalties based on data provided by Defendant, including the number of employees in the putative class and the number of wage statements at issue. *Id.* Specifically, the amount of Labor Code section 226(e) penalties is based on 2,135 deficient wage statements. *Id.*

With respect to potential liability of Plaintiff’s PAGA claim, Plaintiff estimated that Defendant could face civil penalties of up to a maximum \$533,750 if Plaintiff were successful at trial, which is premised on a \$250 penalty per wage statement. *Id.* at ¶ 27. However, even assuming Plaintiff ultimately prevails on his PAGA claim, the Court still has discretion to reduce any PAGA penalties. Pursuant to Labor Code section 2699(e)(2), the Court can decline to award PAGA penalties where “if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at complying with the law. 30 Cal.App.5th 504 (2018). Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539.

Thus, based on the class data provided by Defendant, Plaintiff’s counsel estimated total penalties to be approximately \$739,850. Agnew Decl. at ¶ 29.³ Therefore, Plaintiff’s settlement

³ Again, this number assumes that the Court would award Section 226(e) statutory penalties and full PAGA penalties, Agnew Decl. ¶¶ 27-29.

of \$222,500.00 is about 30 % of the total estimated liability, which is an outstanding result and consistent with other class settlements.

Numerous courts have held that **gross** settlements approximating between only 8 and 25% of the defendant's potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement recovering 16% of potential exposure was fair and reasonable; "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing the litigation to judgment"; noting that whether the settlement is fair and adequate depends on the "the difficulties in proving the case"); *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour class settlement which obtained only 9.1% of projected damages, given the risks of continued litigation) *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of approximately 15% of the potential recovery was fair and reasonable); *Greko v. Diesel U.S.A., Inc.*, No. 10-cv-02576 NC, 2013 WL 1789602, at *5 (N.D. Cal. Apr. 26, 2013) (24% was reasonable).

D. An Analysis of the Terms of the Settlement Agreement.

1. Nature of Any Injunctive Relief.

The Joint Stipulation does not provide for any injunctive relief.

2. Amount and Manner of Distribution of the Compensation to be Provided to Class Members, Including the Amount, or an Estimate, of What Each Class Member Will Receive.

The Joint Stipulation provides for a Gross Settlement Amount of \$222,500.00. The Net Settlement Amount (calculated after deduction of the approved Enhancement Payment, the

LWDA's portion of the PAGA Payment, Settlement Administration Costs and Class Counsel Award) will be paid to all Class Members who do not opt out of the settlement. Joint Stip. §§ I-17, III-A-44. Class Counsel estimates that the Net Settlement Amount will be at least \$111,833.34. Agnew Decl. at ¶ 22.

Based on the anticipated Net Settlement Amount, on a pure raw average, each Class Member will receive approximately \$755.63 each or \$52.38 per wage statement that included the payment of overtime wages during the Class Period. Agnew Decl. at ¶ 23. The amount allocated to each Class Member will be based on the number of qualifying wage statements the individual received (*i.e.* those that included the payment of overtime wages) during the Class Period. *See* Joint Stip. § III-A-44. 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. *Id.*

3. Whether, and Under What Circumstances, Amounts Available for Payment in Settlement Might Not Be Paid to Class Members or Might Revert to the Defendant.

This is a non-reversionary settlement as the entirety of the settlement amount will be fully paid out. *See* Joint Stip. §§ III-A-38, III-A-44, III-L-70. Any individual settlement payments to Settlement 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.

4. Scope of the Release of Class Members' Claims.

The scope of the release, as listed below, is identified in the Joint Stipulation at sections I- 24 and II-B-46, as well as in the Notice of Class Action Settlement that will be sent to Class Members:

1 (a) any and all claims that could have been brought under the facts and
2 allegations made in the operative Complaint, including claims for violation of
3 Labor Code § 226, that accrued during the Class Period; and (b) any and all
4 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.

5 As shown, the scope of the release is narrow and is limited to the claims asserted in the operative
6 Complaint.

7 **5. Tax Treatment of Settlement Amounts.**

8 The Joint Stipulation provides that all Individual Settlement Payments shall be treated as
9 100% penalties. *See* Joint Stip. § III-N-67. The Settlement Administrator will issue distribute
10 appropriate IRS tax forms. Joint Stip. § III-N-66.

11 **6. Affirmative Obligations to be Undertaken by Class Members or Class**
12 **Counsel and the Reasons for Any Such Obligations.**

13 Class Members do not need to do anything should they wish to receive their share of the
14 Net Settlement Amount. Thus, this substantially decreases the amount of burden each Class
15 Member must bear in order to receive his/her settlement share. If a Class Member does not wish
16 to take part in this settlement and be bound by the release, he/she must submit Request for
17 Exclusion. Such obligations are thoroughly identified in each Class Member's Notice of Class
18 Action Settlement. *See* Joint Stip., Ex. A.

19 **7. Notice to Class Members.**

20 Within fifteen (15) calendar days of preliminary approval of this Settlement by the Court,
21 Defendant will transmit to the settlement administrator: i) each Class Member's full name, ii)
22 employee number; iii) most recent mailing address; iv) Social Security Number; and v) the total
23 number of Qualifying Wage Statements each Class Member received during the Class Period
24 ("Class List and Data). *See* Joint Stip. §§ I-8, III-F-51. Upon receipt of the Class Data, the
25 Settlement Administrator shall perform a search based on the National Change of Address
26 Database for information to update and correct for any known or identifiable address changes.
27 Joint Stip. § III-F-52. Within fifteen (15) calendar days after receiving the Class Data, the
28

1 Settlement Administrator shall mail a Notice of Settlement to all Class Members via regular
2 First-Class U.S. Mail, using the most current, known mailing address. *Id.* With respect to any
3 returned envelopes, the settlement administrator shall re-mail to the forwarding address affixed
4 thereto. Joint Stip. § III-F-53. If no forwarding address is provided, the settlement administrator
5 shall promptly attempt to determine a correct address by use of skip-tracing, or other search
6 using the name, address and/or Social Security number of the respective Class Member, and shall
7 then perform a re-mailing, if another mailing address is identified by the Settlement
8 Administrator. *Id.*

9 Class Members will be provided forty-five (45) calendar days to opt out or object to the
10 settlement. Joint Stip. §§ III-G-56, III-J-62. Further, Class Members will be notified of the final
11 approval hearing and will have an opportunity to appear at the Fairness hearing. Joint Stip., Ex.
12 A.

13 **E. Attorney's Fees and Litigation Costs.**

14 California state and federal courts have recognized that an appropriate method for
15 determining award of attorneys' fees is based on a percentage of the total value of benefits to
16 Class Members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254
17 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ("*Serrano II*"); *Boeing Co. v. Van Gemert*,
18 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).
19 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread
20 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not
21 bear the entire burden alone." *Vincent*, 557 F.2d at 769.

22 Under California law, the award of attorneys' fees in common fund wage and hour class
23 action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1
24 Cal. 5th 480, 503 (Aug. 11, 2016) ("We join the overwhelming majority of federal and state
25 courts in holding that when class action litigation establishes a monetary fund for the benefit of
26 the class members, and the trial court in its equitable powers awards class counsel a fee out of
27 that fund, the court may determine the amount of a reasonable fee by choosing an appropriate
28 percentage of the fund created"). Under the percentage of the fund method, the Court's objective

1 remains to “mimic the market” in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361,
2 363 (7th Cir. 1998) (J. Posner) (“When a fee is set by a court rather than by contract, the object is
3 to set it at a level that will approximate what the market will set...The judge, in other words, is
4 trying to mimic the market in legal services”).

5 An award of 33.3% of the fund in attorneys’ fees mimics the marketplace as it “is
6 supported by the fact that typical contingency fee agreements provide that class counsel will
7 recover 33% if the case is resolved before trial and 40% if the case is tried.” *Fernandez v.*
8 *Victoria Secret Stores LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July 21, 2008) (citing
9 Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-*
10 *Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11). Indeed, “empirical studies [that]
11 show that...fee awards in class actions average around one-third of the recovery.” *Chavez v.*
12 *Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

13 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
14 percent of the fund. 1 Cal. 5th at 506. And this was based on a lodestar amount that required a
15 multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is “extraordinarily high
16 or low [should] the trial court [] consider whether the percentage method should be adjusted so
17 as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

18 Moreover, in the *Laffitte* intermediate court decision, the court observed that “33 1/3
19 percent of the common fund is consistent with, and in the range of, awards in other class action
20 lawsuits.” *Laffitte v. Robert Half Int’l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award
21 representing 33.3% of the fund clearly falls within that range, and is consistent with other
22 comprehensive surveys of class action settlements and fee awards. *See Fitzpatrick, An Empirical*
23 *Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833
24 (2010) (analyzing 444 cases between 2006-2007 and concluding that “[m]ost fee awards were
25 between 25 percent and 35 percent, with almost no awards more than 35 percent”); Eisenberg &
26 Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of
27 Empirical Leg. Stud. 248, 262, fn.16 (2010) (independent studies of class action litigation
28 nationwide conclude that fees representing one-third of the total recovery is consistent with

1 market rates).

2 The results delivered by Class Counsel also support the requested percentage of the fund.
3 Here, the Parties have agreed to a payment of a maximum of one-third (1/3) of the Gross
4 Settlement Amount for payment to Class Counsel as attorneys' fees. The Parties have agreed to a
5 payment of the foregoing attorney's fees and, thus, this payment should be presumed to be fair.
6 Further, it is not uncommon for courts to award attorneys' fees as one-third or 33.3% of the
7 settlement amount in wage and hour class action settlements. For example, in *McKinnon v. Best*
8 *Buy Co., Inc.*, (Alameda Superior Court Case No. RG03082294), the court awarded over \$9
9 million as attorneys' fees, which was 33% of the maximum settlement amount of \$26.9 million.
10 At the time of Final Approval, Plaintiff's counsel will also provide the court with declarations
11 and time records to show that a payment of 33.3% of the recovery is justified and fair even under
12 the lodestar method.

13 Further, the Parties have agreed to reimbursement of Class Counsel's litigation costs.
14 Class Counsel have, at their own risk, expended costs, for example, to file this instant action,
15 service of process, payment of other litigation related costs. Lee Decl. at ¶ 5. Based on the
16 foregoing, the court should preliminarily approve the attorney's fees and costs being requested
17 by the Parties.

18 **F. The Settlement Administration Fees.**

19 The Parties have agreed to payment of a maximum of \$4,000 to the settlement
20 administrator, Simpluris, Inc., to send notices and to administer this settlement. Joint Stip. § I-30.
21 Simpluris is a well-recognized class action settlement administrator. The Parties believe that the
22 administration fee is reasonable and should be approved. Agnew Decl. at ¶ 21.

23 **G. Proposed Payment to Class Representative.**

24 Plaintiff requests an enhancement of Ten Thousand Dollars (\$10,000.00). *See* Joint Stip.
25 § I-13. Plaintiff personally met with Class Counsel on various occasions to discuss the case,
26 provide documents and information to Class Counsel, and review the Joint Stipulation. *See*
27 Declaration of Aaron Stanfield ("Stanfield Decl.") at ¶ 6. In addition to the invaluable services
28 that Plaintiff provided, he also took significant risks, both professionally and monetarily, in

1 acting as the Class Representative and seeking benefits on behalf of the Class. The risks to
2 Plaintiff were particularly acute because Plaintiff was a current employee of Defendant, at the
3 time that the lawsuit was filed. *Id.* at ¶ 2. Plaintiff's lawsuit has required Defendant to expend
4 considerable resources, thus placing him at risk for retaliation. Furthermore, because the claims
5 alleged by the class representative involved the payment of costs to the prevailing party, Plaintiff
6 could have possibly faced paying the fees and costs of Defendant, had Plaintiff not prevailed in
7 this action.

8 Further, given that future employers are much less likely to hire individuals who have
9 filed suit against their prior employer, particularly cases of this nature, Plaintiff may face
10 prejudice in the future from other potential employers. Plaintiff took this risk upon himself and
11 the whole class benefited from these risks taken by Plaintiff. Class Members did not have to file
12 individual lawsuits and bear the risks of payment of fees and costs if they did not prevail, nor did
13 they have to face the potential for retaliation and not getting future employment had they filed a
14 public lawsuit.

15 Notably, courts have routinely granted approval of representative enhancements for far
16 greater amounts than the \$10,000 sought by Plaintiff in this case. *See, e.g., Van Vranken v.*
17 *Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of
18 \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio
19 1990) (two incentive awards of \$55,000, and three incentive awards of \$35,000); *Brotherton v.*
20 *Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award);
21 *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio
22 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068,
23 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive
24 award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir.
25 1998) (affirming \$25,000 Incentive award to class representative in ERISA case). Here, Plaintiff
26 requests an enhancement of \$10,000, which is reasonable and consistent with case law.

1 **IV. THE COURT SHOULD CONDITIONALLY CERTIFY THE CLASS**

2 **A. Procedures for Settlement Before Class Certification.**

3 The Parties also may, at the preliminary approval stage, request that the court
4 provisionally approve certification of the class—conditional upon final approval of the
5 settlement. “[P]re-certification settlements are routinely approved if found to be fair and
6 reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001); *Accord Dunk*
7 *v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (although the settlement was reached
8 before any “adversary certification,” the court was satisfied that it was “fair, adequate and
9 reasonable”); *In re Baldwin-United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many courts
10 have employed this practice in the name of judicial efficiency in order to facilitate apparently
11 beneficial settlement proposals”).⁴ As further explained by Professor Newberg:

12 The strength of the findings made by a judge at a preliminary hearing or
13 conference concerning a tentative settlement proposal...may be set out in
14 conditional orders granting tentative approval to the various items submitted to
15 the court. Three basic rulings are often conditionally entered at this preliminary
16 hearing. These conditional rulings may approve a temporary Settlement Class
Members, the proposed settlement, and the class counsel’s application for fees
and expenses.

17 4 Newberg on Class Actions, at § 11.26.

18 In addition to such terms as class identification, settlement amount and payment
19 procedures, the Joint Stipulation reached among the Parties contains a provision pursuant to
20 which the Parties stipulate to the Court’s provisional certification of the Class, but do so for the
21 purposes of this settlement only.

22 **B. The Proposed Class Meets all Certification Requirements.**

23 **1. The Class is Ascertainable and Sufficiently Numerous.**

24 The Class that Plaintiff seeks to conditionally certify is ascertainable. “Class members are
25 ‘ascertainable’ where they may be readily identified without unreasonable expense or time by
26

27
28 ⁴ In determining the fairness and reasonableness of a proposed settlement, California courts may
look to federal cases for guidance. *See Wershba*, 91 Cal. App. 4th at 239-40.

reference to official records.” *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1334 (2008); *see also Faulkinbury v. Boyd & Assocs., Inc.*, 216 Cal. App. 4th 220, 240 (2013) (same). Here, members of the Class are readily identifiable. Defendant has determined that there are approximately 148 individuals that comprise the Class. Agnew Decl. at ¶¶ 15, 25. Furthermore, the Class is sufficiently numerous. Courts generally find that numerosity is satisfied if the class includes forty or more members. *See Villalpando v. Excel Direct Inc.*, 303 F.R.D. 588, 605-606 (N.D. Cal. 2014); *see also Jordan v. L.A. County*, 669 F.2d 1311, 1320 (9th Cir.) (noting, in dicta, that the court “would be inclined to find the numerosity requirement...satisfied solely on the basis of [39] ascertained class members”), *vacated on other grounds*, 459 U.S. 810 (1982).

2. There are Common Questions of Law and Plaintiff’s Claims are Typical of the Class.

The commonality requirement is met when there are questions of law and fact common to the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared legal issues with divergent legal factual predicates is sufficient, as is a common core of salient facts couple with disparate legal remedies within the class”). Commonality requires only that some common legal or factual questions exist; the plaintiffs need not show that all issues in the litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981) Defendant’s conduct is central to the commonality inquiry. *See City of San Jose v. Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where the employer’s conduct is uniformly directed at a class of employees, as it is here, the class wide impact of the Defendant’s policies satisfies the commonality requirement. *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

Plaintiff alleges that Defendant, as a matter of its corporate policy and procedure, violated the Labor Code by its uniform policy of furnishing wage statements that omit “all applicable hourly rates in effect during the pay period” *See* Cal. Lab. Code § 226(a). 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. Plaintiff, like all of the other Class

Members, and was not provided compliant wage statements. *See* Stanfield Decl. at ¶ 3. Thus, Plaintiff's claims are typical to those of the Class Members.

3. Plaintiff and Class Counsel Have Adequately Represented the Class.

The adequacy requirement is also met. "Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." *McGhee v. Bank of Am.*, 60 Cal. App. 3d 442, 450 (1976). Here, Plaintiff does not have any interests adverse to the class, nor have any such issues been raised or presented. Stanfield Decl. at ¶ 4. Plaintiff has taken all necessary steps to represent the interests of the Class, by providing information and documents. *Id.* at ¶¶ 5, 6. For such reasons, Plaintiff has adequately represented the class members and will continue to do so.

Further, as detailed in their declarations, Class Counsel are experienced and well-qualified class action litigators who have litigated many wage and hour class actions and have each been certified as class counsel in numerous other class actions, particularly wage and hour class actions. Agnew Decl. at ¶¶ 31, 36; Lee Decl. at ¶¶ 4, 7, 8; Marder Decl. at ¶ 2, 11; Rosenthal Decl. at ¶¶ 2, 7. From the inception of the case, Class Counsel have solely represented the interest of the Class. For example, Class Counsel expended significant time and resources reviewing the pleadings from the *Magna* class action, meeting and conferring with defense counsel regarding the preclusive effect of the settlement in *Magna*, calculating and analyzing the potential range of recoverable penalties, preparing for and attending mediation, negotiating the terms of the Settlement and drafting the Joint Stipulation. Agnew Decl. at ¶¶ 2-13. Finally, the settlement was obtained for the benefit of the Class, not for the individual Plaintiff. *Id.* at ¶ 2.

V. CONCLUSION

Here, the proposed settlement is fair, adequate, and reasonable. It will result in both substantial monetary benefits to Class Members; it is non-collusive; and it was achieved as the result of informed, extensive, and arm's length negotiations conducted by counsel for the respective Parties who are experienced in wage and hour class action litigation. For the foregoing reasons, Plaintiff respectfully request that the Court grant preliminary approval of the proposed

1 settlement, sign the proposed Order, approve and authorize mailing of the proposed Notice of
2 Class Action Settlement, and set a date for a final approval hearing.

3
4 DATED: October 30, 2020

DIVERSITY LAW GROUP, P.C.

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6 By: _____

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff and the Class
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1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES]ss.
6]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On October 30, 2020, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY**
12 **APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF**
13 **POINTS AND AUTHORITIES IN SUPPORT**
- 14 **2. DECLARATION OF KRISTEN M. AGNEW IN SUPPORT OF PLAINTIFF'S**
15 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
16 **SETTLEMENT**
- 17 **3. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**
18 **FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 19 **4. DECLARATION OF NICHOLAS ROSENTHAL IN SUPPORT OF PLAINTIFF'S**
20 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
21 **SETTLEMENT**
- 22 **5. DECLARATION OF ARRON STANFIELD IN SUPPORT OF PLAINTIFF'S**
23 **MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 24 **6. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S**
25 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
26 **SETTLEMENT**
- 27 **7. [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR**
28 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

on the interested parties in this action as follows:

1 David L. Cheng
2 dcheng@fordharrison.com
3 Ford & Harrison LLP
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6 *Attorneys for Defendant The F.A. Bartlett*
7 *Tree Expert Company Inc.*

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

8 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-
9 entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website
10 www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for
11 the above-entitled case. The service transmission was reported as complete and a copy of the
12 filing receipt/confirmation will be filed, deposited, or maintained with the original document(s)
13 in this office.

14 I declare under penalty of perjury under the laws of the State of California that the
15 above is true and correct. Executed on October 30, 2020, at Los Angeles, California.

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Erika Mejia