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5 Attorneys for Plaintiff HECTOR LEON, individually and
6 on behalf of all other similarly situated employees

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8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN JOAQUIN**
10

11 HECTOR LEON, individually and on
12 behalf of all other similarly situated
employees,

13 Plaintiff,

14 vs

15
16 GOLDEN BAY FENCE PLUS IRON
WORKS, INC., a California Corporation;
17 PAUL CHAVEZ, an individual; NICK
CHAVEZ, an individual; and DOES 1 to 100,
18 inclusive,
19 Defendants.

Case No. STK-CV-UOE-2021-0000543

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT**

Date:

Time: 9:00 a.m.

Dept.: 11B

Judge: Hon. Roger T. Waters

Filed: January 22, 2021

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on _____, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 11B of the above-entitled Court, Plaintiff Hector Leon, individually
4 and on behalf of all other similarly situated individuals, hereby move for entry of an Order for the
5 following:

- 6 1. Preliminarily certifying the proposed class herein for purposes of settlement;
- 7 2. Preliminarily appointing Plaintiff Hector Leon as class representative for purposes of
8 settlement;
- 9 3. Preliminarily appointing the Shimoda Law Corp. as Class Counsel for purposes of
10 settlement;
- 11 4. Preliminarily approving the proposed class action settlement, in the amount of \$300,000.00,
12 which is incorporated herein by reference;
- 13 5. Preliminarily approving the application for payment to Class Counsel of attorneys' fees in
14 the amount of \$105,000.00 (35% of the Gross Settlement Amount);
- 15 6. Preliminarily approving the application for payment to class counsel of reasonable costs not
16 to exceed \$10,000.00;
- 17 7. Preliminarily and conditionally approving the Class Representative Enhancement Payment of
18 \$15,000.00 to Plaintiff Hector Leon;
- 19 8. Preliminarily approving the appointment of Simpluris, Inc. as the Claims Administrator and
20 for payment to Simpluris, Inc. for administering said class action settlement in an amount not
21 to exceed \$6,500.00;
- 22 9. Preliminarily approving the settlement of claims under the Private Attorneys General Act for
23 the total amount of \$10,000.00, 75% of which will be paid to the Labor and Workforce
24 Development Agency and 25% of which will be paid to Aggrieved Employees;
- 25 10. Approving as to form and content the Notice of Proposed Class Action Settlement, and
26 Hearing Date for Final Court Approval of Settlement ("Notice of Settlement") and Claim
27 Form, which provide Class Members information regarding the settlement, their ability to opt
28 out of, or object to, the settlement and which provides instruction on how to dispute an

individual's settlement allocation under the proposed settlement agreement and/or submit a Claim Form to participate in the settlement;

11. Approving the proposed procedures to notify the class and determining that the proposed notification procedures and process complies with class members' due process rights and directing the Notice of Settlement and Claim Form to be sent by first class mail to Class Members;
12. Directing the Defendants to report employment information, including social security numbers, to the Claims Administrator to administer the settlement proceeds;
13. Scheduling a fairness hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable, and adequate;
14. Directing that any residue from settlement checks that were not cashed by the check cashing deadline be donated 50/50 to Koinonia Family Services, a non-profit 501(c)(3) organization with child advocacy programs in the state of California, and to Capital Pro Bono, Inc. as *cy pres* recipients, subject to Court approval under the doctrine of *cy pres*; and
15. Preliminarily and conditionally approving and adopting the Proposed Order and its implementation schedule, which is filed herewith and incorporated by reference.

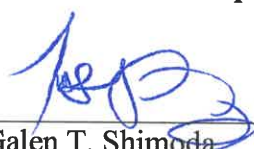
This motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section 2699(l), and California Rule of Court 3.769, on the grounds that the proposed class action and Private Attorneys General Act settlement is fair, reasonable, and adequate as to all class members and should be approved by the Court. This motion will be based on the notice of motion, memorandum of points and authorities, the Declaration of Galen T. Shimoda, the Declaration of Hector Leon, exhibits, the record and files of this case, and any further oral or documentary evidence introduced at the hearing of this motion.

Pursuant to Local Rule 3-113, tentative rulings for Law and Motion will be posted electronically by 1:30 p.m. the day before the hearing. Any party wishing to contest or argue the tentative ruling must email the court at civilcourtclerks@sjcourts.org that they intend to appear remotely no later than 4:00 PM on the day before the scheduled hearing. The Department and Case Number must be in the header of the email. The email must include the Department, Case number, Case Name, Motion, party's name and email, date and time of the hearing, issues they plan to argue, and that they have informed the opposing party. The party must also notify affected counsel, or unrepresented parties, that they intend to appear, no later than 4:00 PM on the day before the

1 **scheduled hearing. Unless the Court and opposing counsel have been notified, the tentative ruling**
2 **shall become the ruling of the Court without oral argument.**

3 Dated: December 21, 2021

Shimoda Law Corp.

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5 By: 

6 Galen T. Shimoda
7 Justin P. Rodriguez
8 Jessica L. Hart
9 Attorneys for Plaintiff
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17 PAUL CHAVEZ, an individual; NICK
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18 inclusive,
19 Defendants.
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Case No. STK-CV-UOE-2021-0000543

CLASS ACTION

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

Date:

Time: 9:00 a.m.

Dept.: 11B

Judge: Hon. Roger T. Waters

Filed: January 22, 2021

Trial Date: None Set
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I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT

This Motion is brought seeking preliminary approval of a wage and hour class action settlement in the gross amount of \$300,000.00. *See generally* Exhibit A (Joint Stipulation of Class Action and PAGA Settlement and Release Between Plaintiff and Defendants [“Agreement”]). Plaintiff Hector Leon (“Plaintiff”) brought this class action individually and on behalf of other similarly situated employees employed by Defendants Golden Bay Fence Plus Iron Works, Inc., Paul Chavez, and Nicholas Chavez (“Defendants”). Plaintiff worked for Defendants in California from approximately October 2018 through May 2019 and then again from September 2019 through March 2020 and was subject to all the same policies and practices that are alleged to be unlawful in this litigation. *See generally* Exhibit B (Plaintiff’s Operative Complaint); Declaration of Hector Leon (“Decl. Leon”) ¶ 2.

Plaintiff has alleged that Defendants failed to pay overtime wages, failed to pay minimum wages, failed to provide meal periods, failed to provide rest breaks, failed to provide accurate wage statements, failed to timely pay wages, failed to reimburse expenses, failed to maintain accurate records, failed to provide paid sick leave, and unfair competition. *See generally* Exhibit B. Plaintiff has also alleged Defendants is liable for civil penalties under the Private Attorneys General Act (“PAGA”) based on these violations. *See id.*; Exhibit C (Plaintiff’s Ltr. to the LWDA Regarding PAGA Claims). These violations primarily stem from Plaintiff’s allegations that Defendants violated California law by 1) failing to pay minimum wages to Plaintiff and similarly situated employees for all hours worked due their business practice of rounding employee hours; 2) failing to provide compliant meal and rest periods, or pay premiums in lieu thereof; and 3) failing to pay Plaintiff and similarly situated employees all reimbursements owed for use of their personal cell phones and vehicles for work-related purposes. The PAGA, waiting time penalty, wage statement violation, and unfair competition claims also derive from these violations. *See* Exhibit B. Plaintiff has contended that this is a meritorious class action lawsuit and that this case is appropriate for class certification for settlement purposes as the requisites for class certification in this case can be satisfied. *See* Exhibit B.

Defendants has denied all of Plaintiff’s allegations in their entirety and any liability or wrongdoing of any kind. *See* Declaration of Galen T. Shimoda (“Decl. Shimoda”), ¶ 5. Defendants has denied that this case is appropriate for class certification other than for purposes of settlement and

1 that Plaintiff would have difficulty proving class certification is proper here. *See id.* However, subject
2 to approval by the Court, the parties have been able to compromise and settle all asserted claims for
3 monetary compensation as a result of extensive investigations, informal document and data exchanges,
4 and extended negotiations relating to all aspects of the asserted claims. *See* Exhibit A. Plaintiff's
5 counsel is convinced that the proposed settlement is in the best interest of the putative class based on
6 the discovery, investigations, negotiations, and a detailed knowledge of the issues in this case. *See*
7 Decl. Shimoda, ¶¶ 3, 6-10. The prospect of potential class certification issues and the uncertainty of
8 class certification, difficulties of complex litigation, the lengthy process of establishing specific
9 damages and various possible delays and appeals were carefully considered by Plaintiff and Plaintiff's
10 counsel in agreeing to the proposed settlement. *See id.*

11 It is well within the discretion of this Court to grant preliminary and conditional approval of the
12 Agreement, which satisfies all of the criteria for preliminary settlement approval under California law.
13 Accordingly, Plaintiff requests that the Court: (1) provisionally and conditionally certify the proposed
14 settlement class; (2) grant preliminary and conditional approval of the proposed Agreement (Exhibit
15 A); (3) set dates for and direct distribution to the class of (a) the Notice of Pendency of Class Action
16 and Proposed Settlement (Exhibit F), which provides Class Members information regarding the
17 settlement, including information regarding the opportunity to opt-out of, or object to, the settlement
18 and how to participate in the settlement, and (b) the Claim Form (Exhibit G) notifying each class
19 member of their expected pro rata share of the settlement; and (4) adopt the implementation schedule
20 contained in the proposed order and schedule a final approval hearing.

21 **II. PROCEDURAL AND LITIGATION HISTORY**

22 Plaintiff filed a class action complaint on approximately January 22, 2021, in the San Joaquin
23 County Superior Court against Defendants. Plaintiff exhausted administrative remedies under the
24 PAGA by providing notice of the claims and violations to the LWDA on November 12, 2020. *See*
25 Exhibit C; Cal. Lab. Code § 2699.3(a), (c); Decl. Shimoda, ¶ 3. *See id.*; Exhibit B. There is no date set
26 for a motion for certification or trial in this matter. *See* Decl. Shimoda, ¶ 4.

27 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

28 Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and

1 potential damages for such claims. *See id.* Plaintiff worked during the time all of Defendants' policies
2 and practices at issue in the Complaint were in effect and provided information regarding these policies
3 and practices, enabling pre-filing investigations to take place. *See* Decl. Leon ¶¶ 3, 5. The parties
4 engaged in informal discovery and exchange of documents, including reviewing employee data, such as
5 timecards, paystubs, payroll data and relevant policies for the entirety of the statute of limitations
6 applicable to the alleged claims. The discovery covered all aspects of the asserted claims, including
7 certification issues, merits issues, damages, the scope and configuration of Class Members, the content
8 and implementation of the wage and hour policies at issue, issues relating to manageability concerns at
9 trial, among other relevant areas. *See* Decl. Shimoda, ¶ 7. The information allowed Plaintiff to
10 determine the extent and frequency of any violations in accordance with Plaintiff's contentions and
11 create an accurate damages model to assess the reasonableness of any settlement. *See id.*

12 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

13 **a. Plaintiff and Defendants Engaged in Extensive Arm's Length Negotiations**

14 The final settlement occurred only after extended, and sometimes contentious, arm's length
15 negotiations. Over the course of approximately fourteen (14) months, Plaintiff has been investigating
16 the claims and discussing with Defendants' counsel the merits of the claims and certification issues
17 present in this case. *See id.* at ¶¶ 6-10. The parties exchanged substantial amounts of information and
18 legal analysis regarding the asserted claims. *See id.* Then, only after approximately fourteen (14)
19 months of litigation and negotiation, the parties were able to reach a mutually agreeable settlement. *See*
20 *id.* at ¶ 8. In light of the claims and defenses at issue, the parties agreed to a Gross Settlement Amount
21 of \$300,000.00. *See* Exhibit A.

22 **b. The Terms of the Settlement**

23 Under the settlement agreement, Defendants has agreed to the following:

- 24 1. The following group of individuals are covered by the Settlement (*See* Exhibit A, ¶ 5):
25 All non-exempt employees who have or continue to work for Defendants
26 from January 22, 2017, to preliminary Court approval of the Settlement.
- 27 2. Pay the Gross Settlement Amount of \$300,000.00, inclusive of the employer's share of
28 payroll taxes, on a claims made basis to resolve and release the claims alleged in the Complaint. *See id.*

1 at ¶ 14 (c). Regardless of the claims rate, Defendants will be obligated to pay out a minimum of 50%
2 of the Net Settlement Amount. *See id.* at ¶ 14. (c)(i). In the event that less than 50% of the Net
3 Settlement Amount is claimed by Class Members who submit valid Claim Forms, the Qualified
4 Claimants, *i.e.* Class Members who have submitted valid Claim Forms, will have their individual claim
5 amounts increased pro rata until 50% of the Net Settlement Amount is distributed. *See id.* Aggrieved
6 Employees will still be paid their share of the PAGA Payment regardless of whether they opt out of
7 being Class Members or submit Claim Forms.

8 3. The parties agree that up to \$15,000.00 for Plaintiff Hector Leon will be paid as a Class
9 Representative Enhancement Payment. This amount will be in addition to any amount Plaintiff may be
10 entitled to under the terms of the Agreement. *See id.* at 14 ¶ (c)(vi).

11 4. The parties agree that the cost of administering this class action settlement shall be paid
12 from the settlement proceeds. *See id.* at 14 ¶ (c)(vii). Subject to Court approval, the parties have
13 selected Simpluris, Inc. to act as the class action claims administrator, who has provided a maximum
14 cost estimate of \$6,500.00 to administer the class settlement. *See Exhibit D (Simpluris, Inc. Quote).*
15 The difference between any actual administration costs and the \$6,500.00 allocated under the
16 Agreement, if any, will be paid to Class Members on a pro rata basis. *See Decl. Shimoda, ¶ 22.*

17 5. The parties agree that \$10,000.00 of the Gross Settlement Amount shall be allocated to
18 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
19 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See Exhibit A, at ¶*
20 *14 (c)(ii).*

21 6. The parties agree that up to thirty-five percent (35%) of the Gross Settlement Amount
22 (\$105,00.00) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case.
23 Defendants will not oppose any application for attorneys' fees so long as it is within this threshold. *See*
24 *id.* at ¶ 16. Additionally, the parties agree that Plaintiff will also be entitled to the actual litigation costs
25 as approved by the Court in an amount not to exceed \$10,000.00. *See id.* The difference between any
26 actual costs and the \$10,000.00 will be redistributed to Class Members on a pro rata basis. *See id.* The
27 proposed notice to be sent to class members will state this information. *See Exhibit F.*
28

1 7. Any Claims Administrator Costs, any amounts paid for attorneys' fees and costs, the
2 Class Representative Enhancement Payment, and PAGA Payment will be paid out from the Gross
3 Settlement Amount, not in addition to the Gross Settlement Amount. *See* Exhibit A, ¶ 13.

4 8. In consideration for the value received in the Agreement, Class Members who fail to
5 timely opt-out of this settlement will waive all Qualified Claimant's Released Claims as set forth in the
6 Agreement. *See id.* at ¶ 23. Aggrieved Employees will waive all Released PAGA Claims as set forth
7 in the Agreement regardless of whether they opt out of being a Class Member. *See id.*

8 9. For any portion of the Net Settlement Sum or PAGA Payment allocated to Qualified
9 Claimants and/or Aggrieved Employees that is not claimed by them by cashing their respective
10 settlement checks within 90 days, the remaining amount shall be paid 50/50 to Koinonia Family
11 Services, a non-profit 501(c)(3) organization with child advocacy programs in the state of California,
12 and Capital Pro Bono, Inc. as *cy pres* recipients, subject to Court approval. under the doctrine of *cy*
13 *pres*. *See id.* at ¶ 20.

14 **c. Allocation of Settlement Funds**

15 Payment to Qualified Claimants of their share of the Net Settlement Amount will require the
16 submission of a Claim Form. Payment to Aggrieved Employees of their share of the PAGA Payment
17 will not require the submission of a Claim Form. Payment of Claim Amounts to Qualified Claimants
18 shall be as follows: A Net Settlement Amount will be determined by subtracting from the Gross
19 Settlement Amount any amounts for approved attorneys' fees and costs, any Enhancement Payment to
20 the Class Representative, the Claims Administrator Costs, and the PAGA Payment. Each Qualified
21 Claimant's share of the Net Settlement Amount shall be determined by taking the Qualifying
22 Workweeks for the individual Qualified Claimant and dividing that by the Qualifying Workweeks for all
23 Class Members and multiplying that fraction by the Net Settlement Amount. However, regardless of the
24 claims rate, Defendants shall be obligated to pay out a minimum of 50% of the Net Settlement Amount.
25 If less than 50% of the Net Settlement Amount is claimed by Qualified Claimants, the Qualified
26 Claimants will have their individual shares of the Net Settlement Amount increased, pro rata, until 50%
27 of the Net Settlement Amount is distributed. Any portion of the Net Settlement Amount in excess of the
28 minimum 50% threshold that is not claimed by Qualified Claimants shall remain the property of

1 Defendants. *See* Exhibit A at ¶ 14 (c)(i). Each Aggrieved Employee's share of the 25% portion of the
2 PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period
3 by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction
4 will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's
5 individual share. *See id.* at ¶ 14 (c)(i)(ii).

6 V. ARGUMENT

7 a. Class Action Settlements are Subject to Court Review and Approval Under the 8 California Rules of Court

9 A class action may not be dismissed, compromised, or settled without Court approval and the
10 decision to approve or reject a settlement is committed to the Court's sound discretion. *See* Cal. Rules
11 of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)¹; *Wershba v. Apple Computer, Inc.*, 91 Cal. App.
12 4th 224, 234-35 (2001); *see also* Cal. Lab. Code §§ 2699(l)(2) (requiring Court review of PAGA
13 settlements). However, courts should give "proper deference to the private consensual decision of the
14 parties," since "the court's intrusion upon what is otherwise a private consensual agreement negotiated
15 between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment
16 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
17 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned."
18 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Where a settlement is reached on terms
19 agreeable to all parties, a court should disapprove of the settlement "only with considerable
20 circumspection." *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa. 1975). The law favors
21 settlement of lawsuits, particularly class actions and other complex cases where substantial resources
22 can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents of*
23 *Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

24 b. The Terms of The Settlement Are Fair and Within the Range of Reasonableness

25 The purpose of the Court's preliminary evaluation of a proposed class action settlement is to
26 determine only whether the proposed settlement is within the range of possible approval and whether
27

28 ¹The California Supreme Court has authorized California's trial courts to rely on these federal resources to decide class certification issues. *See Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

1 notice to the class of its terms and conditions and the scheduling of a formal fairness hearing is
2 warranted. *See Wershba*, 91 Cal. App. 4th at 234-35. If the Court finds a proposed settlement falls
3 within “the range of reasonableness,” it should grant preliminary approval of the class action settlement.
4 *See, e.g., North County Contr. ’s Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90
5 (1994). To make the fairness determination, the Court must consider several factors, including:

6 the strength of the Plaintiff’s case, the risk, expense, complexity and likely
7 duration of further litigation, the risk of maintaining class action status
8 through trial, the amount offered in settlement, the extent of discovery
9 completed and the stage of the proceedings, the experience and views of
counsel, the presence of a governmental participant, and the reaction of the
class members to the proposed settlement.

10 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). However, this Court should begin its
11 analysis with a presumption that the proposed settlement is fair. “A presumption of fairness exists
12 where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and discovery
13 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
14 litigation; and (4) the percentage of objectors is small.” *Id.* at 1802.

15 **i. The Settlement is a Result of Extensive, Non-Collusive Arm’s Length**
16 **Negotiations Between the Parties**

17 Settlement in this case was reached only after litigation and extensive arm’s length negotiations
18 lasting approximately fourteen (14) months. *See Decl. Shimoda*, ¶¶ 6-10. At all times, the negotiations
19 were adversarial and contentious, although still professional in nature. *See id.* Further, while Plaintiff
20 contends he would ultimately prevail on the claims and the issue of certification, this is not a certainty
21 and there is substantial risk in proceeding to further litigation. *See id.* The ability to secure a guaranteed
22 settlement now and ensure class members receive some compensation, rather than proceed to further
23 litigation and potentially recover nothing, was a motivating factor in reaching this settlement. *See id.*

24 **ii. The Extent of Investigation and Discovery Completed Provided Ample**
25 **Information to Enter Into an Informed and Reasonable Settlement**

26 The parties were in possession of all necessary information during the negotiations. The parties
27 engaged in substantial informal discovery and exchange of documents, including reviewing employee
28 data, such as timecards, paystubs, payroll data and relevant policies for the entirety of the statute of

1 limitations applicable to the alleged claims, which covered all aspects of the class claims and helped
2 thoroughly vet the extent of Plaintiff's claims against Defendants and create an accurate damages
3 model. *See id.* at ¶ 6-10. Plaintiff was in possession of this information prior to calculating the
4 potential damages in this case. *See id.* As a result, Plaintiff was able to make a reasonable estimation
5 of Defendants' potential liability. *See id.* For these reasons, the settlement now before the Court was
6 reached at a stage where "the parties certainly have a clear view of the strengths and weaknesses of
7 their cases" sufficient to support the settlement. *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617 (N.D.
8 Cal. 1979).

9 **iii. Plaintiff's Counsel is Experienced in Similar Litigation**

10 Plaintiff's counsel has considerable experience in class actions and wage and hour litigation.
11 Plaintiff's counsel has brought and is currently bringing several wage and hour class and/or PAGA
12 actions. Thus, Plaintiff's counsel is qualified to evaluate the class claims, value of settlement versus
13 moving for certification and going to trial, and the viability of possible affirmative defenses. *See Decl.*
14 *Shimoda*, ¶¶ 11-20. Plaintiff's counsel believes that the settlement is fair and reasonable in light of the
15 complexities of the case, the uncertainties of class certification and litigation, and the secured benefit to
16 the class. *See id.* at ¶¶ 6, 21.

17 **iv. The Settlement is Fair and Reasonable Based on the Strength of Plaintiff's Case**
18 **and the Risks and Costs of Further Litigation**

19 A review of the Agreement's terms does not give rise to any doubts about its fairness. Based on
20 the records and facts of this case, Plaintiff has secured a gross recovery of approximately 16% and a net
21 recovery of approximately 8% of the claims' maximum likely value. *See id.* at ¶¶ 9-10. Additionally,
22 the average net award per class member is approximately \$866.70. *See id.* This settlement is a
23 reasonable compromise of the class and PAGA claims, and is within the percentile ranges of the total
24 available damages that have been approved in other class settlements. *See Wershba*, 91 Cal. App. 4th
25 at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1990); *Officers for Justice v.*
26 *Civil Serv. Comm'n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re Omnivision Technologies, Inc.*,
27 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in settlement of 6% of maximum
28 potential recovery after reduction for attorney's fees was higher than median percentage for recoveries

1 in shareholder class action settlements, averaging 2.2%-3% from 2000 through 2002); *Bravo v. Gale*
2 *Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) (approving a settlement where the net
3 recovery to class members was approximately 7.5% of the projected maximum recovery amount); *Avila*
4 *v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017): (approving a settlement
5 with a gross recovery of 11% of the projected maximum damages available and a net recovery of
6 approximately 6.7% of the projected maximum recovery); *Bellinghausen v. Tractor Supply Co.*, 306
7 F.R.D. 245 (N.D. Cal 2015) (approving a settlement where the gross recovery was approximately 8.5%
8 of the projected maximum recovery).

9 **v. The Proposed Settlement is a Reasonable Compromise of Claims**

10 The case of *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008) requires additional
11 information be presented to the Court, acting as a fiduciary for the absent class members “to ensure that
12 the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims
13 being released, discounted by the risks and expenses of attempting to establish and collect on those
14 claims by pursuing the litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los*
15 *Angeles*, 186 Cal. App. 4th 399 (2010), clarified that a *Kullar* showing does not require the parties to
16 submit an illusory prediction of the outer reaches of exposure without taking into account the actual
17 risks of certification, decertification, dispositive motions, and trial. *Kullar* also does not require an
18 explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its
19 claims provided there is a record that allows “an understanding of the amount that is in controversy and
20 the realistic range of outcomes of the litigation.” *Id.* at 409. The *Munoz* Court found that the record
21 before the trial court was sufficient, having included the number of class members, payroll data,
22 declarations describing hours and overtime worked, as well as variances in duties and rest and meal
23 period experience, and a companion action alleging less than \$5,000,000 in damages. This information
24 constituted “an adequate basis from which to garner a reasonably adequate understanding of the amount
25 that is in controversy within the meaning of *Kullar*.” *Id.*

26 Plaintiff similarly relied upon payroll data and Class Members data to determine the realistic
27 potential damages suffered by the class as a whole. *See* Decl. Shimoda, ¶¶ 6-10. This analysis allowed
28 Plaintiff to determine the extent and frequency of potential violations on all claims as to all Class

Members. *See id.* Ultimately, Plaintiff secured a percentage of the total demand for the putative class that is within the range of what has been found to be sufficient in several other cases. *See, supra*, Section V.c.iv; *see also, e.g., In re Omnivision Technologies, Inc.*, 559 F.Supp.2d at 1042; *Reed v. 1-800 Contacts, Inc.*, 2014 U.S. Dist. LEXIS 255 (S.D. Cal. 2014) (approving a settlement of \$11.7 million where the maximum range of damages was \$5,000 for each of the alleged 300,000 instances of unlawful recording violations (\$1.5 billion), equaling approximately .78% of the total demand and approximately \$800 per class member). This settlement represents a reasonable compromise given the percentage of the total demand that was secured, the average recovery per class member, the Court's ability and discretion to cut PAGA penalties, and the uncertainty of class certification. *See Decl. Shimoda*, ¶ 10.

vi. The Enhancement Payment to the Named Plaintiff for Plaintiff's Services to the Putative Class Is Reasonable and Routinely Awarded by Courts

The Enhancement Payment to the named Plaintiff is intended to recognize the time and effort expended on behalf of the class. Indeed, Courts routinely approve enhancement payments to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation. *See Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001). In *Ingram*, the Court approved enhancement payments of \$300,000.00 to each named plaintiff in recognition of the services they provided to the class by responding to discovery, participating in the mediation process, and taking the risk of stepping forward on behalf of the class. *See Id.* at 694; *see also Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00 enhancement payment).

In this case, Plaintiff provided and explained documents, being available at all times to discuss the case with Plaintiff's counsel. *See Decl. Shimoda*, ¶ 7; *Decl. Leon*, ¶ 5. Plaintiff spent a significant amount of time pursuing this litigation for the benefit of all Class Members. *See id.* Plaintiff brought this action knowing there would be a delay in any payment as the litigation progressed, rather than proceeding on individual claims in front of the California Labor Commissioner. *See id.* Payment of \$15,000.00 to Plaintiff is appropriate given the risk, assistance, time required in bringing this case and resolution of this case.

1 **vii. Awarding Attorneys' Fees as a Percentage of the Common Fund Is Reasonable**
2 **and Customarily Approved by Courts**

3 California state and federal courts have recognized that when a litigant's efforts create or
4 preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally
5 among all the beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert*,
6 444 U.S. 472, 477-478 (1980) ("A lawyer who recovers a common fund for the benefit of persons other
7 than . . . her client is entitled to a reasonable attorney's fee from the fund as a whole."); *Vincent v.*
8 *Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375
9 (1970); *Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999); *see also Serrano v.*
10 *Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016).
11 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation
12 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
13 burden alone." *Vincent*, 557 F.2d at 769; *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026,
14 1027 (9th Cir. 1977). California state courts have approved use of a percentage of the fund to calculate
15 reasonable attorney fee awards where the amount of the settlement is certain or is an easily calculable
16 sum of money. *See Dunk*, 48 Cal. App. 4th at 1808.

17 The Ninth Circuit has also held that the common fund doctrine applies when: (1) the class of
18 beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the fee can be
19 shifted with some exactitude to those benefitting. *See Paul, Johnson, Alston & Hunt v. Gaulty*, 886
20 F.2d 268, 271 (9th Cir. 1989). These criteria are "easily met" when "each member of a certified class
21 has an undisputed and mathematically ascertainable claim to part of a lump-sum settlement recovered
22 on her behalf." *Id.* at 271 (citations omitted). Under the three (3) factors set forth in *Paul, Johnson,*
23 *Alston & Hunt*, the common fund doctrine applies in this case because there is a sufficiently identifiable
24 class of beneficiaries (*e.g.* the settlement class), the benefits can be accurately traced to the settlement
25 Plaintiff and Plaintiff's counsel were able to negotiate on behalf of the class, and the fee can be shifted
26 with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the common
27 fund. As set forth in the fee award examples provided below for the Court's reference, it is an accepted
28 practice in wage and hour class action settlements to award attorneys' fees based on a percentage of the

1 common fund. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 967-972 (9th Cir. 2003); *Sanders v. City*
2 *of Los Angeles*, 3 Cal.3d 252, 261, 263 (1970); *Wershba*, 91 Cal. App. 4th at 254; *Bell v. Farmers Ins.*
3 *Exchange*, 115 Cal. App. 4th 715, 726, 765 (2004).

4 Historically, attorneys' fee awards in common fund cases in general range from 20% to 50% of
5 the fund, depending on the circumstances of the case. *See Newberg on Class Actions*, (3rd Ed.), 1992,
6 §14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are
7 generally approved as reasonable in wage and hour settlements below \$10 million:

8 More particularly, courts may award attorneys fees in the 30-40% range in wage and hour
9 class actions that result in recovery of a common fund under \$10 million. *See Vasquez v.*
10 *Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-492 (E.D. Ca. 2010) (citing to five
11 recent wage and hour class actions where federal district courts approved attorney fee
12 awards ranging from 30 to 33%); *Singer v. Becton Dickinson and Co.*, 2010 U.S. Dist.
13 LEXIS 53416, 2010 WL 2196104, *8 (S.D. Ca. June 1, 2010) (approving attorney fee
award of 33.33% of the common fund and holding that award was similar to awards in
three other wage and hour class action cases where fees ranged from 33% to 40%);
Romero v. Producers Dairy Foods, Inc., 2007 U.S. Dist. LEXIS 86270, 2007 WL
3492841 (E.D. Ca. Nov. 14, 2007).

14 *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796 at *22-23 (S.D. Cal. 2011). Plaintiffs
15 request of thirty-five percent (35%) of the settlement sum for attorneys' fees is within established rates
16 for fee awards in class settlements pursuant to the common fund doctrine, especially in light of the
17 excellent results achieved in this case. *See In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379
18 (N.D. Cal. 1989); *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-00634;
19 *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745; *Green, et al. v.*
20 *Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069; *Benitez et al. v.*
21 *Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122; *Chavez et al. v. Petrissans et al.*, USDC
22 Eastern District, Case No. 1:08-cv-00122; *Willis et al. v. Cal-Western Transport*, USDC Eastern
23 District, Case No. 1:00-cv-05695. To determine whether a percentage is reasonable, a court should
24 consider: (1) the percentage that would likely be negotiated between parties in a similar case; (2) the
25 percentage applied in other class actions; (3) the quality of class counsel; (4) the size of the award; and
26 (5) whether there are any objections by class members. *See In re Ikon Office Solutions, Inc. Secur.*
27 *Litig.*, 194 F.R.D. 166, 193 (E.D. Pa. 2000); *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555,
28 71 (C.D. Cal. 2005) ("the absence of objections or disapproval by class members to class counsel's fee

1 request further supports finding the fee request reasonable”).

2 These factors support Plaintiff’s request for reasonable attorneys’ fees. The typical percentage
3 negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation
4 depending on the complexity of the case. In class action litigation, the typical percentage negotiated
5 between parties ranges from thirty to forty percent (30% to 40%) based on the same factors. Plaintiff’s
6 request of 35% falls within these typical fee arrangements. *See* Decl. Shimoda, ¶ 21. The quality of
7 counsel and the average size of settlement payments to Class Members and Aggrieved Employees
8 (\$866.70) also support the fee request when compared to other settlements courts have considered as
9 good results. *See Schiller v. David’s Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal.
10 2012) (“Class Members will receive an average of approximately \$198.70, with the highest payment to
11 a Class Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is
12 highlighted by the fact that there was no objection to the settlement amount or the attorneys’ fees
13 requested.”); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) (“the
14 results achieved in this case were very favorable. Class members are provided with immediate
15 monetary relief, with an average award of around several hundred dollars and a minimum award of
16 \$50”).

17 **c. Provisional Certification of the Class is Appropriate**

18 Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-
19 defined community of interest in the questions of law and fact involved affecting the parties to be
20 represented.” *Dunk*, 48 Cal. App. 4th at 1806. The “community of interest” element “embodies three
21 factors: (1) common questions of law or fact predominate; (2) class representatives with claims or
22 defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.*
23 Here, the parties agree that, for the purposes of settlement, these prerequisites are met. *See* Exhibit A.

24 **i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous**

25 The proposed settlement class is ascertainable because all putative class members can be readily
26 identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7 Cal.5th
27 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166
28 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 180 individuals

1 who fall within the definition of Class Member, which makes joinder of all members impracticable.
2 *See Gay v. Waiters' & Dairy Lunchmen's Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff'd* 694 F.2d 531
3 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (noting no set minimum to
4 meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus,
5 these requirements are satisfied.

6 **ii. The Commonality, Predominance, and Typicality Requirements are Met**

7 The commonality requirement is met when there are questions of law or fact regarding the class
8 as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or
9 factual questions exist; Plaintiff need not show that all issues in the litigation are identical. *See*
10 *Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d
11 447, 460 (1974). Common questions of law or fact must also predominate over individual questions
12 and class-wide treatment of a dispute must be superior to individual litigation.² *See Richmond*, 29
13 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication
14 by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the
15 named representative are typical of those of the class, though "they need not be substantially identical."
16 *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983).

17 The common questions of law and fact in this case stem from Plaintiff's contention that
18 Defendants 1) failed to pay minimum wages to Plaintiff and similarly situated employees for all hours
19 worked due their business practice of rounding employee hours; 2) failed to provide compliant meal
20 and rest periods, or pay premiums in lieu thereof; and 3) failed to pay Plaintiff and similarly situated
21 employees all reimbursements owed for use of their personal cell phones and vehicles for work-related
22 purposes. The PAGA, waiting time penalty, wage statement violation, and unfair competition claims
23 also derive from these violations. *See Exhibit B*. Plaintiff and the Class Members seek the same
24 remedies under state law. Under these specific circumstances, the commonality and predominance
25 requirements are satisfied. Regarding the typicality requirement, Plaintiff contends he suffered from
26 the same unlawful policies, treatment, and circumstances as Class Members did, will request the same
27

28 ²When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1 remedies, and will rely on the same methods of proof to establish liability and damages. *See id.* Thus,
2 the typicality requirement is also satisfied for settlement purposes.

3 **iii. The Adequacy Requirement is Met**

4 The adequacy of representation requirement is met if the named representative and counsel have
5 no interests adverse to those of the putative class members and are committed to vigorously prosecuting
6 the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60
7 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the proposed settlement,
8 Plaintiff and the putative class members will receive a pro rata share of the settlement based on the
9 number of workweeks they worked for Defendants. *See* Exhibit A. Finally, any settlement class
10 member who wishes to opt-out of the settlement may do so, and he or she may also dispute the number
11 of workweeks stated in the Notice of Pendency of Class Action and Proposed Settlement (Exhibit F).

12 There is no conflict of interest between Plaintiff and Class Members. Plaintiff and Plaintiff's
13 counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class.
14 Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this case by
15 speaking with Plaintiff and reviewing substantial amounts of documents. Plaintiff's counsel thereafter
16 engaged Defendants' counsel in settlement discussions over the course of approximately fourteen (14)
17 months. Moreover, Plaintiff's counsel has experience defending and bringing wage and hour claims.
18 Because Plaintiff's counsel has vigorously pursued Plaintiff's and the class members' claims, the
19 adequacy requirement is met. *See generally* Decl. Shimoda.

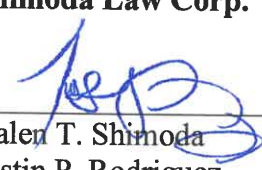
20 **VI. CONCLUSION**

21 For all of the foregoing reasons, Plaintiff respectfully requests that this Court preliminarily and
22 conditionally certify the class for settlement purposes; grant preliminary and conditional approval to the
23 proposed settlement, including the Plaintiff's Class Representative Enhancement Payment, the payment
24 to the LWDA under PAGA, and Class Counsel's application for reasonable attorneys' fees and costs;
25 approve the Notice of Settlement and Claim Form, including the proposed deadlines for opting-out of
26 and objecting to the settlement; and schedule the final settlement approval hearing. A copy of
27 Plaintiff's proposed order is being filed concurrently herewith.

28 //

1 Dated: December 21, 2021

Shimoda Law Corp.

2
3 By: 

Galen T. Shimoda

Justin P. Rodriguez

Jessica L. Hart

Attorneys for Plaintiff

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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

HECTOR LEON, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs

GOLDEN BAY FENCE PLUS IRON
WORKS, INC., a California Corporation;
PAUL CHAVEZ, an individual; NICK
CHAVEZ, an individual; and DOES 1 to 100,
inclusive,
Defendants.

Case No. STK-CV-UOE-2021-0000543

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date:

Time: 9:00 a.m.

Dept.: 11B

Judge: Hon. Roger T. Waters

Filed: January 22, 2021

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation of Class Action and PAGA Settlement and Release Between Plaintiff and Defendant
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the LWDA Regarding PAGA Claims
D	Simpluris, Inc. Quote
E	Plaintiff's Itemized Costs
F	Notice of Pendency of Class Action and Proposed Settlement
G	Proposed Claim Form
H	Proof of Submission of Proposed Settlement Agreement to LWDA

Dated: December 21, 2021

Shimoda Law Corp.

By: _____

Galen T. Shimoda
Justin P. Rodriguez
Jessica L. Hart
Attorneys for Plaintiff

EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

HECTOR LEON, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

GOLDEN BAY FENCE PLUS IRON WORKS,
INC., a California Corporation; PAUL
CHAVEZ, an individual; NICHOLAS
CHAVEZ, an individual; and DOES 1 to 100,
inclusive,

Defendants.

CASE NO. STK-CV-UOE-2021-0000543

CLASS ACTION

**JOINT STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE BETWEEN PLAINTIFF AND
DEFENDANTS**

This Joint Stipulation of Class Action and PAGA Settlement and Release (hereinafter
“Stipulation of Settlement” is made and entered into by and between Plaintiff Hector Leon, on

1 behalf of himself and all others similarly situated ("Plaintiff"), Golden Bay Fence Plus Iron Works,
2 Inc., Paul Chavez, and Nicholas Chavez ("Defendants").

3 This Stipulation of Settlement shall be binding on Plaintiff and those persons he seeks to
4 represent, and on (i) Golden Bay Fence Plus Iron Works, Inc., Paul Chavez, and Nicholas Chavez
5 ("Defendants"); (ii) each of Defendants' respective past, present and future parents, subsidiaries
6 and affiliates; (iii) the past, present and future partners, shareholders, directors, officers, agents,
7 employees, attorneys, insurers, predecessors, successors and assigns of any of the foregoing; and
8 (iv) any individual or entity which could be jointly liable with any of the foregoing. The Settlement
9 contemplated by this Stipulation of Settlement may hereinafter be referred to as the "Settlement."

10 THE PARTIES STIPULATE AND AGREE as follows:

11 1. Plaintiff and Defendants are collectively referred to herein as "the Parties."

12 2. On January 22, 2021, Plaintiff filed a complaint in the San Joaquin County
13 Superior Court alleging PAGA, class, and individual wage and hour claims against Defendants.

14 3. Plaintiff's Complaint alleges a failure to pay overtime wages, failure to pay
15 minimum wages, failure to provide meal periods, failure to provide rest breaks, failure to provide
16 accurate wage statements, failure to timely pay wages, failure to reimburse expenses, failure to
17 maintain accurate records, unfair competition, and a PAGA cause of action, on behalf of all non-
18 exempt employees who worked for Defendants in California from January 22, 2017, to the present.
19 The term "Action" means this putative class action pending in San Joaquin County Superior Court.
20 The Class Period is from January 22, 2017, to preliminary Court approval of the Settlement.

21 4. This Action has been actively litigated. There have been on-going investigations,
22 and there has been an exchange of extensive information. Plaintiff has not filed a motion for class
23 certification in this action, nor has a date been set by the Court for the filing of such a motion.

24 5. For purposes of this Settlement, the "Settlement Class" or "Class Members" shall
25 consist of all persons employed by Defendants as non-exempt employees in California between
26 January 22, 2017, and preliminary Court approval of the Settlement. The Settlement Class,
27 however, shall not include any person who previously settled or released any of the claims covered
28 by this Settlement, any person who previously was paid or received awards through civil or

1 administrative actions for the claims covered by this Settlement, or any person who submits a
2 timely and valid Request for Exclusion as provided in this Settlement.

3 6. Solely for purpose of settling this case, the Parties stipulate and agree that the
4 requisites for establishing class certification with respect to the Settlement Class have been met
5 and are met. More specifically, the Parties stipulate and agree that:

6 a. The Settlement Class is ascertainable and so numerous as to make it
7 impracticable to join all Class Members.

8 b. There are common questions of law and fact including, but not limited to,
9 the following:

10 i. Whether Defendants complied with applicable laws affecting
11 Plaintiff and the Settlement Class under the California Labor Code and the Wage Orders of the
12 California Industrial Welfare Commission; and

13 ii. Whether Plaintiff and the Settlement Class are entitled to alleged
14 penalties, interest, and attorneys' fees and costs.

15 c. Plaintiff believes Plaintiff's claims are typical of the claims of the members
16 of the Settlement Class.

17 d. Plaintiff believes Plaintiff will fairly and adequately protect the interests of
18 the Settlement Class, and that Galen T. Shimoda, Justin Rodriguez, and Jessica L. Hart of Shimoda
19 Law Corp. should be "Class Counsel," and will fairly and adequately protect the interests of the
20 Settlement Class.

21 e. The prosecution of separate actions by individual members of the
22 Settlement Class would create the risk of inconsistent or varying adjudications, which would
23 establish incompatible standards of conduct.

24 f. With respect to the Settlement Class, Plaintiff believes that questions of law
25 and fact common to the members of the Settlement Class predominate over any questions affecting
26 any individual member in such Class, and a class action is superior to other available means for
27 the fair and efficient adjudication of the controversy.

28

1 8. Defendants deny any liability or wrongdoing of any kind whatsoever associated
2 with the claims alleged in the Complaint, and further deny that, for any purpose other than settling
3 this Action, this Action is appropriate for class or representative treatment. With respect to
4 Plaintiff's claims, Defendants contend, among other things, that they have complied with all
5 applicable state, federal and local laws affecting Plaintiff and the Settlement Class.

6 9. It is the desire of the Parties to fully, finally and forever settle, compromise and
7 discharge all disputes and claims arising from the allegations and causes of action stated in the
8 Complaint. To achieve a full and complete release of Defendants, each Class Member
9 acknowledges that this Stipulation of Settlement is intended to include in its effect all claims of
10 any nature reasonably arising out of the allegations made in the Complaint.

11 10. It is the intention of the Parties that this Stipulation of Settlement shall constitute a
12 full and complete settlement and release of all claims arising from the allegations in the Complaint
13 against (i) Golden Bay Fence Plus Iron Works, Inc., Paul Chavez, and Nicholas Chavez
14 ("Defendants"); (ii) each of Defendants' respective past, present and future parents, subsidiaries
15 and affiliates; (iii) the past, present and future partners, shareholders, directors, officers, agents,
16 employees, attorneys, insurers, predecessors, successors and assigns of any of the foregoing; and
17 (iv) any individual or entity which could be jointly liable with any of the foregoing (collectively
18 "Released Parties").

19 11. Counsel for the Settlement Class have conducted a thorough investigation into the
20 facts of this Action, and have diligently pursued an investigation of Class Members' claims against
21 Defendants. Based on their own independent investigation and evaluation, Class Counsel are of
22 the opinion that the Settlement with Defendants for the consideration and on the terms set forth in
23 this Stipulation of Settlement is fair, reasonable and adequate and is in the best interest of the
24 Settlement Class in light of all known facts and circumstances, including the risk of significant
25 delay, the risk the Settlement Class will not be certified by the Court, defenses asserted by
26 Defendants and numerous potential appellate issues. Defendants and Defendants' counsel also
27 agree that the Settlement is fair and in the best interest of the Parties.

1 12. The Parties agree to cooperate and take all steps necessary and appropriate to
2 consummate this Settlement and for entry of judgment in accordance with this Stipulation of
3 Settlement.

4 13. This Settlement provides for a claims-made administration process wherein
5 Defendants will pay Settlement Awards (defined below) according to a specified formula to each
6 Settlement Class Member who does not request to be excluded from this Settlement and who
7 submits a timely and valid claim form as defined below. The maximum total payment under the
8 Settlement is \$300,000.00, including the Settlement Awards for all claims, the attorneys' fees and
9 litigation costs to Class Counsel, the Enhancement Award to the Class Representative, the claims
10 administration costs, the PAGA penalties, payroll taxes on the wage portion of the Settlement
11 Awards, and any other payments provided by the Settlement. It is understood and agreed that
12 Defendants' maximum total liability under the Settlement shall not exceed the sum of \$300,000.00.
13 It is understood and agreed that Defendants shall have no obligation to pay any person, entity, or
14 organization more than the amount of its maximum total liability under the Settlement.

15 TERMS OF SETTLEMENT

16 14. NOW THEREFORE, in consideration of the mutual covenants, promises and
17 agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

18 a. It is agreed by and among Plaintiff and Defendants that this Action and any
19 claims, damages or causes of action arising out of the Complaint which are the subject of this
20 Action, be settled and compromised as between the Settlement Class and Defendants, subject to
21 the terms and conditions set forth in this Stipulation of Settlement and the approval of the Court.

22 b. Effective Date: The Settlement embodied in this Stipulation of Settlement
23 shall become effective when all of the following events have occurred: (i) this Stipulation of
24 Settlement has been executed by all Parties and by counsel for Plaintiff and Defendants; (ii) the
25 Court has given preliminary approval to the Settlement; (iii) the class settlement notice has been
26 given to the Settlement Class, providing them with an opportunity to submit Claim Forms to
27 participate in the Settlement, or to opt out of the Settlement; (iv) the Court has held a formal
28 fairness hearing and entered a final order and judgment certifying the Settlement Class and finally

1 approving this Stipulation of Settlement, without objection by the California Labor and Workforce
2 Development Agency ("LWDA"); and (v) in the event there are objections to the Settlement which
3 are not later withdrawn, the later of the following events: when the period for filing any appeal,
4 writ or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ or
5 other appellate proceeding having been filed; or any appeal, writ or other appellate proceeding
6 opposing the Settlement has been dismissed finally and conclusively with no right to pursue further
7 remedies or relief; or any appeal, writ or other appellate proceeding has upheld the Court's final
8 order with no right to pursue further remedies or relief. In this regard, it is the intention of the
9 Parties that the Settlement shall not become effective until the Court's order approving the
10 Settlement is completely final, and there is no further recourse by an appellant or objector who
11 seeks to contest the Settlement. It is further agreed by the Parties that this Settlement will not
12 become effective if Defendants, contrary to Paragraph 13 above, is required to pay more than the
13 total amount of its maximum total liability under the Settlement as set forth in Paragraph 13 under
14 any circumstances. It is further agreed by and between the Parties that this Settlement shall not
15 become effective, and Defendants shall not have any obligation (monetary or otherwise) under the
16 terms of this Settlement, unless and until any objections, writs and/or appeals, and any rights of
17 appeal with respect to any objections or the judgment, have been finally exhausted and resolved
18 upholding the terms of this Settlement.

19 c. Maximum Settlement Amount, and Net Settlement Amount: To implement
20 the terms of this Settlement, Defendants agrees to pay on a claims-made basis up to a maximum
21 of \$300,000.00 ("Maximum Settlement Amount"), including all Settlement Awards to Class
22 Members, the Enhancement Award to the Class Representative, PAGA penalty payments, payroll
23 taxes for the wage portion of the Settlement Awards, employer payroll taxes, and claims
24 administration expenses. At no time shall Defendants have the obligation to segregate the funds
25 comprising the Maximum Settlement Amount, and Defendants shall retain exclusive authority
26 over and responsibility for those funds subject to the disbursement of funds necessary for the
27 payment of claims, approved attorneys' fees, approved costs, approved Enhancement Award to
28 the Class Representative, the claims administration fees and expenses, the payment to the LWDA

1 pursuant to PAGA, the employer payroll taxes for the wage portion of the Settlement Awards, and
2 any other payments provided by this Settlement. The Settlement Awards paid to Class Members,
3 the attorneys' fees and litigation costs to Class Counsel, the Enhancement Award to the Class
4 Representative, the fees and expenses of the Claims Administrator, the payment to the LWDA
5 pursuant to PAGA, the employer payroll taxes for the wage portion of the Settlement Awards, and
6 any other payments provided by this Settlement, shall be paid out of the Maximum Settlement
7 Amount. The "Net Settlement Amount," the amount available for potential distribution to Class
8 Members, shall be calculated by deducting from the Maximum Settlement Amount, (i) Class
9 Counsel's attorneys' fees and litigation costs, (ii) the Enhancement Award, (iii) the PAGA penalty
10 payment to the LWDA as described further below, (iv) the employer payroll taxes for the wage
11 portion of the settlement (defined and allocated below), and (v) the fees and expenses of the Claims
12 Administrator. Settlement Awards to the Class Members will be calculated by the Claims
13 Administrator and paid out of the Net Settlement Amount as set forth below.

14 i. Settlement Awards to Class Members: Settlement Awards to Class
15 Members will be determined based on the number of weeks worked by all Class Members during
16 the Class Period based on information provided by Defendants. The workweeks will be calculated
17 by Defendants or the Claims Administrator for Class Members by dividing the total days employed
18 in California as a Class Member during the Class Period by seven. Partial workweeks will not be
19 counted, meaning incomplete workweeks will be rounded down; however, if a Class Member
20 worked only one day as a Class Member, such Class Member will be credited with having worked
21 one workweek for purposes of the Settlement. Defendants' workweek data will be presumed to
22 be correct, unless a particular Class Member proves otherwise to the Claims Administrator by
23 credible written evidence submitted with the Claim Form. All workweek disputes will be resolved
24 and decided by the Claims Administrator, and the Claims Administrator's decision on all
25 workweek disputes will be final and non-appealable. For any amount of the Net Settlement Sum
26 not claimed by Class Members by submitting timely valid Claim Forms or because a Class
27 Member opted out of this Settlement, the Parties agree that the minimum amount to be paid to
28 Class Members who submit valid claims (*i.e.*, the settlement floor) will be 50 percent of the Net

1 Settlement Amount; if the amount claimed by Class Members is less than 50 percent, the amount
2 to be paid to Class Members who submit valid claims will be increased pro rata until 50 percent
3 of the Net Settlement Amount is paid out. Any unclaimed residue remaining in the Net Settlement
4 Amount will remain Defendants' sole and exclusive property. Any person who opts out of the
5 Settlement is not a Class Member, and is ineligible to object to the Settlement or to participate in
6 the Settlement.

7 ii. Private Attorneys General Act Allocation: Subject to Court
8 approval, the Parties have agreed to allocate \$10,000.00 of the Maximum Settlement Amount to
9 Plaintiffs' claims under PAGA. Seventy-five percent (75%) of this amount, or in other words
10 \$7,500.00 will be paid out of the Maximum Settlement Amount to the Labor and Workforce
11 Development Agency ("LWDA") of the State of California, and the remaining balance of
12 \$2,500.00 will remain included in the Net Settlement Amount.

13 iii. Allocation of Settlement Awards: The Parties have agreed, based
14 on the allegations in the Action, that individual Settlement Awards payable to eligible Class
15 Members who submit timely and valid claim forms will be allocated from the Net Settlement
16 Amount and paid as follows: 1/3 will be allocated to alleged unpaid wages for which IRS Forms
17 W-2 will issue; 1/3 will be allocated to alleged unpaid penalties for which IRS Forms 1099-MISC
18 will issue; and 1/3 will be allocated to alleged unpaid interest for which IRS Forms 1099-MISC
19 will issue.

20 iv. Settlement Awards Do Not Trigger Additional Benefits: All
21 Settlement Awards to Class Members shall be deemed to be income to such Class Members solely
22 in the year in which such awards actually are received by the Class Members. It is expressly
23 understood and agreed that the receipt of such Settlement Awards will not entitle any Class
24 Member to additional compensation or benefits under any company bonus, contest or other
25 compensation or benefit plan or agreement in place during the period covered by the Settlement,
26 nor will it entitle any Class Member to any increased retirement, 401(k) benefits or matching
27 benefits, or deferred compensation benefits. It is the intent of this Settlement that the Settlement
28 Awards provided for in this Agreement are the sole payments to be made by Defendants to the

1 Class Members in connection with this Settlement, and that the Class Members are not entitled to
2 any new or additional compensation or benefits as a result of having received the Settlement
3 Awards (notwithstanding any contrary language or agreement in any benefit or compensation plan
4 document that might have been in effect during the period covered by this Settlement).

5 v. Attorneys' Fees and Litigation Costs: Subject to Court approval or
6 modification, Defendants further agree to pay, from the Maximum Settlement Amount, Class
7 Counsel's attorneys' fees and litigation costs as set forth in Paragraph 16 below.

8 vi. Class Representative: The Parties agree to the designation of
9 Plaintiff as "Class Representative." Subject to Court approval, Defendants agree to pay Plaintiff,
10 from the Maximum Settlement Amount, an Enhancement Award at no additional cost to the
11 Released Parties, and subject to Plaintiff's execution of a general release of all claims under
12 California Code of Civil Procedure Section 1542. The Enhancement Award cannot exceed
13 \$15,000.00, subject to Court approval, and is in addition to any claimed individual Settlement
14 Award to which Plaintiff is entitled under this Stipulation of Settlement. The Enhancement Award
15 is to be part of, and to be deducted from, the Maximum Settlement Amount. Defendants or the
16 Claims Administrator will issue an IRS Form 1099-MISC for the Enhancement Award to the
17 Plaintiff for Plaintiff's service as a Class Representative, and Plaintiff will be responsible for
18 correctly characterizing this compensation for tax purposes and for paying any taxes on the
19 amounts received. Should the Court approve an Enhancement Award to the Class Representative
20 in an amount less than that set forth above, the difference between the lesser amount approved by
21 the Court and the Enhancement Award set forth above shall be added to the Net Settlement Amount

22 vii. Claims Administrator: The Claims Administrator will be Simpluris,
23 Inc., or such other claims administrator as may be mutually agreeable to the Parties, after review
24 and approval by the Parties of a not-to-exceed quote for claims administration expense which
25 Plaintiff's counsel agrees to request and circulate to Defendants' counsel. All claims
26 administration expenses shall be paid out of the Maximum Settlement Amount. The fees of the
27 Claims Administrator for work done shall be paid by Defendants regardless of the outcome of this
28 Settlement. The expenses associated with settlement administration are not to exceed \$6,500.00.

1 viii. Mailing of Settlement Awards: The Claims Administrator will
2 cause the Settlement Awards to be mailed to the Class Members who have submitted timely and
3 valid Claim Forms, have not opted out of the Settlement, and have not previously released their
4 claims as to Defendants, within 35 calendar days after the Settlement becomes effective as defined
5 in Paragraph 14.b

6 ix. Claim Forms: For each Class Member, there will be pre-printed
7 information on the Claim Form mailed to the Class Member, based on Defendants' records, stating
8 the number of weeks worked as Class Member during the Class Period, along with each Class
9 Member's estimated Settlement Award amount. The Claim Form shall be substantially in the form
10 identified as Exhibit 1 to this Settlement. The pre-printed information based on Defendants'
11 records shall be presumed to be correct, unless written proof to the contrary is provided to the
12 Claims Administrator. A Class Member may challenge the pre-printed information on the Claim
13 Form as to the weeks worked during the Class Period by submitting written evidence to the Claims
14 Administrator with the Claim Form. All disputes regarding weeks worked will be resolved and
15 decided by the Claims Administrator, and the Claims Administrator's decision on all disputes will
16 be final and binding. All Claim Forms must be signed and dated to be considered valid.

17 d. Enhancement Award to Plaintiff for Service as Class Representative: The
18 Claims Administrator will pay the Enhancement Award approved by the Court to Plaintiff within
19 35 calendar days after the Settlement becomes effective as defined in Paragraph 14.b.

20 e. Right to Rescission: If more than five percent (5.0%) of the Settlement
21 Class opts out of the Settlement by submitting valid and timely Requests for Exclusion as set forth
22 in the Notice of Pendency of Class Action and Proposed Settlement, Defendants shall have the
23 right (but need not) in its sole discretion to rescind and void the Settlement, before final approval
24 by the Court, by providing written notice to Class Counsel no later than ten (10) calendar days
25 before the final approval hearing date. If Defendants exercise this option, Defendants shall pay
26 any costs of Settlement claim administration incurred up to that date, but not to include Class
27 Counsel's fees and costs.

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1 percent of the Maximum Settlement Amount, or in other words up to \$105,000.00, and attorneys'
2 costs not to exceed \$10,000.00 from the Maximum Settlement Amount. Defendants will not object
3 to Class Counsel's application for attorneys' fees and litigation costs up to these amounts. The
4 amounts set forth above will cover all work performed and all fees and costs incurred to date, and
5 all work to be performed and all fees and costs to be incurred in connection with the approval by
6 the Court of this Stipulation of Settlement, the administration of the Settlement, and obtaining the
7 final judgment. Should Class Counsel request lesser amounts, or should the Court approve lesser
8 amounts for attorneys' fees and litigation costs, the difference between the lesser amounts and the
9 maximum amounts set forth above shall be added to the Net Settlement Amount.

10 17. The attorneys' fees and litigation costs approved by the Court shall be paid to Class
11 Counsel within 35 calendar days after the Settlement becomes effective as defined in Paragraph
12 14.b.

13 NOTICE TO THE PLAINTIFF CLASS

14 18. A Notice of Pendency of Class Action, Proposed Settlement and Hearing Date for
15 Final Court Approval ("Notice of Pendency of Class Action and Proposed Settlement") shall be
16 jointly drafted by the Parties, and as approved by the Court, shall be sent by the Claims
17 Administrator to the Class Members by first class mail. The Notice of Pendency of Class Action
18 and Proposed Settlement shall be substantially in the form identified as Exhibit 2 to this Settlement.
19 Accompanying the Notice of Pendency of Class Action and Proposed Settlement will be the Claim
20 Form that shall be jointly drafted by the Parties and as approved by the Court.

21 a. Within 30 calendar days of preliminary approval of this Settlement by the Court,
22 Defendants shall provide to the Claims Administrator the Class Members' names, last-known
23 addresses, last-known telephone numbers, Social Security Numbers, and start and end dates during
24 the Class Period. The Parties agree the Social Security Numbers will be used only by the Claims
25 Administrator for the sole purpose of effectuating the Settlement and will not be provided to Class
26 Counsel at any time or in any form. Notwithstanding anything herein to the contrary, neither the
27 Claims Administrator nor the Class Counsel will be entitled to receive confidential information of
28 Defendants (including non-public personal information of its employees) unless and until the

1 Claims Administrator or Class Counsel, as the case may be, signs and delivers a non-disclosure
2 agreement to Defendants on terms and conditions reasonably acceptable to Defendants. To the
3 extent Class Counsel possesses or comes to possess the Class Members' contact information and/or
4 Social Security Numbers from the Claims Administrator Class Counsel shall return all such
5 information (including copies and data or information derived therefrom) within 5 calendar days
6 from the date the Court finally approves the Settlement, shall not retain copies of such information,
7 and shall not maintain or use such information for any purpose. The spreadsheet provided for
8 above, shall be based on Defendants' payroll and other business records and in a format acceptable
9 to the Claims Administrator. Defendants agrees to consult with the Claims Administrator prior to
10 the production date to ensure that the format will be acceptable to the Claims Administrator. The
11 Claims Administrator will run a check of the Class Members' addresses against those on file with
12 the U.S. Postal Service's National Change of Address List. Within 60 calendar days of preliminary
13 approval of this Settlement, the Claims Administrator will mail the Notice and the Claim Form to
14 Class Members.

15 b. Notices and Claim Forms returned to the Claims Administrator as
16 non-delivered during the 60-calendar day period for the filing of claims shall be resent to the
17 forwarding address, if any, on the returned envelope. If there is no forwarding address, the Claims
18 Administrator will do an NCOA check and will skip-trace return mail and re-mail within five (5)
19 days of receipt using the Class Member's Social Security Number; this search will be performed
20 only once per Class Member by the Claims Administrator. Class Members will have a maximum
21 of 15 days from the date of the re-mailing due to an undeliverable notice to cure the deficiency, or
22 until the end of the claims filing deadline, whichever is later. Upon completion of these steps by
23 the Claims Administrator, Defendants and the Claims Administrator shall be deemed to have
24 satisfied their obligations to provide the Notice of Pendency of Class Action and Settlement to the
25 affected member of the Settlement Class. The affected member of the Settlement Class shall
26 remain a member of the Settlement Class and shall be bound by all the terms of the Stipulation of
27 Settlement and the Court's Order and Final Judgment.

c. Claim Forms must be completed in full and timely returned to be valid. If a timely submitted Claim Form is not completed in full, the Claims Administrator will send one deficiency notice to the Class Member within fifteen (15) calendar days before the postmark deadline, advising Class Member to cure the deficiency. The deficiency notice will provide the Class Member fifteen (15) calendar days from the date of mailing of the deficiency notice to cure the deficiency; the completed Claim Form must be postmarked no later than the 15th day after the date of mailing of the deficiency notice or the deadline for the submission of Claim Forms (whichever is later), or, unless otherwise agreed upon by the Parties, it must be rejected as untimely by the Claims Administrator. The Claims Administrator will also send one reminder notice to Class Members who have not returned a claim form 20 days before the deadline. The cost of all deficiency or reminder notices shall be part of the Claims Administrator's expenses and paid out of the Maximum Settlement Amount.

d. The Notice of Pendency of Class Action and Settlement shall also identify the procedures for opting out of or objecting to the Settlement.

e. Class Counsel shall provide to the Court, at least sixteen (16) Court days before the final fairness hearing, an initial declaration by the Claims Administrator of due diligence and proof of mailing with regard to the mailing of the Notice of Pendency of Class Action and Proposed Settlement, and the Claim Form.

ADMINISTRATION PROCESS

19. Class Members shall have sixty (60) calendar days from the date of mailing to respond to the Notice of Pendency of Class Action and Proposed Settlement.

20. For any Claim Forms submitted by Class Members, they shall be sent directly by Class Members to the Claims Administrator at the address indicated on the Claim Form. The Claims Administrator shall review the Claim Forms and calculate the Settlement Awards. The Claims Administrator will certify jointly to Class Counsel and Defendants' Counsel the outcome of any disputes raised through the Claim Forms. Settlement Awards to Class Members will be mailed by the Claims Administrator within thirty-five (35) calendar days after the Settlement becomes effective as defined in Paragraph 14.b. Settlement Award checks shall remain valid and

1 negotiable for one hundred and twenty (120) calendar days from the date of their issuance; the
2 Parties agree the Claims Administrator will send one reminder notice to all Class Members who
3 have not cashed the settlement award check thirty (30) calendar days prior to the deadline; upon
4 the deadline to cash the Settlement Award checks, the checks will automatically be cancelled by
5 the Claims Administrator if not cashed by the Class Member within that time, at which point the
6 Class Member's claim will be deemed void and of no further force or effect, and the Class
7 Member's claims will remain released by the Settlement. The checks provided to Class Members
8 shall prominently state the expiration date or a statement that the checks will expire in one hundred
9 and twenty (120) calendar days, or alternatively, such a statement may be made in a letter
10 accompanying the check. Expired Settlement Award checks will not be reissued, except for good
11 cause and as mutually agreed by the Parties in writing. Any residue from uncashed Settlement
12 Award checks after the expiration date will be paid within fourteen (14) calendar days after one
13 hundred and twenty (120) day check cashing period expires pursuant to Code of Civil Procedure
14 section 384(b)(3) as follows: 50% to Koinonia Family Services, a non-profit IRS 501(c)(3)
15 charitable organization, to be used for child advocacy programs in the State of California, and 50%
16 percent to Capital Pro Bono, Inc. as *cy pres* recipients, subject to Court approval. Any residue
17 received by Koinonia shall be ordered by the Court to be used solely for child advocacy programs
18 within the State of California pursuant to Code of Civil Procedure section 384(b). Upon
19 completion of its calculation of payments, the Claims Administrator shall provide Defendants with
20 a report listing the amount of all payments to be made to each Class Member. Defendants, on
21 behalf of the Released Parties, will pay to the Claims Administrator the Maximum Settlement
22 Amount within twenty-one (21) calendar days after the Settlement becomes effective as defined
23 in Paragraph 14.b. The Claims Administrator will be responsible for making appropriate
24 deductions, calculating and reporting the employer payroll taxes on the Settlement Awards, paying
25 to Class Counsel any Court-approved attorneys' fees and litigation costs, paying to the Class
26 Representatives any Court-approved Enhancement Award, paying the LWDA seventy-five
27 percent (75%) of the amount allocated for PAGA penalties above, meeting tax reporting
28 obligations, and for issuing the individual Settlement Awards to Class Members. Proof of

1 compliance with the Court's final approval order will be provided to counsel for the Parties by the
2 Claims Administrator within twenty-one (21) days after all payment obligations, the check cashing
3 deadline for Class Members, and payment to the *cy pres* beneficiaries have passed.

4 OPTING OUT OF / OBJECTING TO THE SETTLEMENT

5 21. Opting Out of the Settlement. For those Class Members who do not wish to
6 participate in the Settlement, such Class Members may exclude themselves by submitting a timely
7 written request to the Claims Administrator. The written request ("Request for Exclusion") should
8 state that he/she has received the Notice of Pendency of Class Action and Proposed Settlement,
9 decided not to participate in the Settlement, and words to the effect that he/she desires to be
10 excluded from the Settlement. The Request for Exclusion must also state the individual's full
11 name, address, date of birth, and the dates he/she worked as a Class Member for Defendants in
12 California. The Request for Exclusion must be signed, dated, and mailed by First Class U.S. Mail,
13 or the equivalent, to the Claims Administrator. All Requests for Exclusion must be postmarked
14 and mailed to the Claims Administrator no later than sixty (60) calendar days after the Claims
15 Administrator mails the Notice of Pendency of Class Action and Proposed Settlement and the
16 Claim Form to the Class Members. Any individual who submits a Request for Exclusion will not
17 be allowed to object to the terms of the Settlement. If an individual submits both an executed
18 Claim Form and a Request for Exclusion, the Request for Exclusion will be deemed invalid, and
19 the individual will be included in the Settlement Class and will be bound by the terms of the
20 Settlement.

21 22. Objecting to the Settlement. Any individual who does not exclude himself/herself
22 from the Settlement can object to the terms of the Settlement in writing before the deadline to
23 object to the Settlement. To object, the individual must file a written objection and a notice of
24 intention to appear at the Final Approval hearing with the Clerk of the Calaveras County Superior
25 Court of the State of California and send copies to the Claims Administrator, Class Counsel and
26 counsel for Defendants. Any written objection must state each specific reason in support of the
27 objection and any legal support for each objection. The individual must state his/her full name,
28 address, date of birth, and the dates he/she worked as a Class Member in California for Defendants.

1 To be valid and effective, any written objections to approval of the Settlement must be filed with
2 the Clerk of the Court and delivered to the Claims Administrator, Class Counsel and counsel for
3 Defendants no later than sixty (60) calendar days after the Claims Administrator mails the Notice
4 of Pendency of Class Action and Proposed Settlement and the Claim Form to the Class Members.
5 However, a Class Member may appear at the Final Approval Hearing, either in person or through
6 their own counsel, and object to the Settlement Agreement and any of its terms without submitting
7 a prior objection in the manner and by the deadline specified above. If the Court rejects the
8 objection, the individual will be bound by the terms of the Settlement and will not receive any
9 portion of the Settlement amount unless he/she has submitted a valid and timely Claim Form.

10 RELEASE BY THE CLASS

11 23. Effective upon the date of final approval by the Court of this Stipulation of
12 Settlement, and except as to such rights or claims as may be created by this Stipulation of
13 Settlement, the Settlement Class and each member of the Class who has not submitted a valid
14 Request for Exclusion, fully releases and discharges the Released Parties, all claims under state,
15 federal and local law that were or could have been asserted based on the facts and allegations made
16 in the Action, and any amendments thereto, as to the Class Members, including without limitation,
17 California Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 246, 246.5, 247, 248.5, 256, 510,
18 512, 558, 558.1, 1174, 1193.6, 1194, 1194.2, 1197.1, 2802, and 2699, *et seq.*, California's
19 Minimum Wage Order, California Industrial Commission Wage Orders, Cal. Code Regs., Title. 8,
20 section 11040, *et seq.*, California Business and Professions Code section 17200, *et seq.*, and
21 including all claims for alleged unpaid wages, rounding time entries, overtime or double time
22 wages, minimum wages, timely payment of wages during employment, timely payment of wages
23 at separation, rest periods and rest period premiums, meal periods and meal period premiums, off-
24 the-clock work, wage statements, payroll records and recordkeeping, unreimbursed business
25 expenses, personal phone usage, personal vehicle usage, failure to provide paid sick leave, failure
26 to pay additional 401(k) benefits and/or deferred compensation benefits and/or matching benefits
27 for payments received under the Settlement, unfair competition, unfair business practices,
28 unlawful business practices, fraudulent business practices, class actions, representative actions,

1 aggrieved party claims, injunctive relief, declaratory relief, liquidated damages, penalties of any
2 nature (including but not limited to civil penalties, waiting-time penalties, wage statement
3 penalties, and PAGA penalties), interest, fees, costs, as well as all other claims and allegations
4 alleged in the Action, from January 22, 2017, through the date the Court finally approves the
5 Settlement (collectively "Released Claims").

6 24. In addition to the Released Claims identified in Paragraph 23, Plaintiff agrees to
7 generally release the Released Parties from any and all claims, whether known or unknown, under
8 all federal, state and local statutes, and federal and state common law (including but not limited to
9 those for contract, tort, and equity), except for workers compensation claims. Plaintiff
10 acknowledges the language of Section 1542 of the California Civil Code, which provides:

11 A general release does not extend to claims that the creditor or
12 releasing party does not know or suspect to exist in his or her favor
13 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.

14 Plaintiff expressly waives the protection of Section 1542. Plaintiff understands and agrees
15 that claims or facts in addition to or different from those which are now known or believed by
16 them to exist may hereafter be discovered. It is Plaintiff's intention to settle fully and release all
17 of the claims, except for workers compensation claims, they now have against the Released Parties,
18 whether known or unknown, suspected or unsuspected.

19 DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

20 25. To effectuate the terms of the Settlement, the Parties agree all formal and informal
21 discovery shall be stayed pending Court approval of the Settlement. Class Counsel agree to cease
22 all affirmative communication (oral and written) with the putative class members, other than
23 through Court-approved notices; this provision does not prevent Class Counsel from
24 communicating with any Class Members who may contact Class Counsel. Plaintiff shall promptly
25 submit this Stipulation of Settlement to the San Joaquin County Superior Court in support of
26 Plaintiff's Motion for Preliminary Approval and determination by the Court as to its fairness,
27 adequacy and reasonableness. Plaintiff agrees to provide Defendants the opportunity to review,
28 and to approve before filing, Plaintiff's Motion for Preliminary Approval. At the same time

1 Plaintiff submits this Stipulation of Settlement to the San Joaquin County Superior Court, Plaintiff
2 agrees to submit a copy of the Stipulation of Settlement to the LWDA. Promptly, upon execution
3 of this Stipulation of Settlement, Plaintiff shall apply to the Court for the entry of an order
4 preliminarily approving the Settlement in a form that is mutually agreeable between the Parties
5 and also provides for the following:

6 a. Scheduling a fairness hearing on the question of whether the proposed
7 Settlement, including payment of attorneys' fees and litigation costs, costs of administration and
8 the Class Representative's Enhancement Award should be finally approved as fair, reasonable and
9 adequate as to the members of the Settlement Class;

10 b. Certifying a Settlement Class, Plaintiff Hector Leon as Class
11 Representative, and Galen T. Shimoda, Justin P. Rodriguez and Jessica L. Hart of Shimoda Law
12 Corp. as Class Counsel;

13 c. Approving as to form and content the proposed Notice of Pendency of Class
14 Action and Proposed Settlement;

15 d. Approving as to form and content the proposed Claim Form;

16 e. Approving the manner and method for Class Members to request exclusion
17 from the Settlement as contained herein and within the Notice of Pendency of Class Action and
18 Proposed Settlement;

19 f. Directing the mailing of the Notice of Pendency of Class Action and
20 Proposed Settlement and the Claim Form by first class mail to the Class Members; and

21 g. Preliminarily approving the Settlement subject only to the objections of
22 Class Members and final review by the Court; and

23 h. Enjoining Plaintiff and all Class Members from filing or prosecuting any
24 other cases, claims, suits or administrative proceedings (including filing claims with the Division
25 of Labor Standards Enforcement of the California Department of Industrial Relations) regarding
26 the Released Claims unless and until such Class Members have filed valid Requests for Exclusion
27 with the Claims Administrator and the time for filing claims with the Claims Administrator has
28 elapsed.

1 i. The Preliminary Approval Order shall be substantially in the form identified
2 as Exhibit 3 to this Settlement.

3 DUTIES OF THE PARTIES FOR FINAL COURT APPROVAL

4 26. Class Counsel agreed to return all confidential documents, lists and data in all forms
5 and formats (originals and copies) within seven (7) calendar days from final Court approval of the
6 Settlement. Plaintiff agrees to provide Defendants the opportunity to review, and to approve
7 before filing, Plaintiff's Motion for Final Approval of Class Action Settlement. Class Counsel
8 agrees to submit a proposed final order and judgment, in a form that is mutually agreeable between
9 the parties and also provides for the following:

10 a. Approving the Settlement, adjudging the terms thereof to be fair, reasonable
11 and adequate, and directing consummation of its terms and provisions;

12 b. Approving Class Counsel's application for an award of attorneys' fees and
13 litigation costs;

14 c. Approving the Enhancement Award to the Class Representative; and

15 d. Entering judgment in accordance with California Rules of Court, Rule
16 3.769(h), and permanently barring and enjoining all members of the Settlement Class from
17 prosecuting against Defendants; each of Defendants' respective past, present and future parents,
18 subsidiaries and affiliates; the past, present and future partners, shareholders, directors, officers,
19 agents, employees, attorneys, insurers, predecessors, successors and assigns of any of the
20 foregoing; and any individual or entity which could be jointly liable with any of the foregoing.

21 e. The Final Approval Order shall be substantially in the form identified as
22 Exhibit 4 to this Settlement.

23 PARTIES' AUTHORITY

24 27. The signatories hereto hereby represent that they are fully authorized to enter into
25 this Stipulation of Settlement and bind the Parties hereto to the terms and conditions thereof.

26 MUTUAL FULL COOPERATION

27 28. The Parties agree to fully cooperate with each other to accomplish the terms of this
28 Stipulation of Settlement, including, but not limited to, execution of such documents and taking

1 such other action as reasonably may be necessary to implement the terms of this Stipulation of
2 Settlement. The Parties shall use their best efforts, including all efforts contemplated by this
3 Stipulation of Settlement and any other efforts that may become necessary by order of the Court,
4 or otherwise, to effectuate this Stipulation of Settlement and the terms set forth herein. As soon
5 as practicable after execution of this Stipulation of Settlement, Class Counsel shall, with the
6 assistance and cooperation of Defendants and its counsel, take all necessary steps to secure the
7 Court's final approval of this Stipulation of Settlement.

8 29. The Parties and their respective counsel agree that they will not attempt to
9 encourage or discourage Class Members from filing Claim Forms or Requests for Exclusion.

10 NO PRIOR ASSIGNMENTS

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

15 NO ADMISSION

16 31. Nothing contained herein, nor the consummation of this Stipulation of Settlement,
17 is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on
18 the part of Defendants. Each of the Parties hereto has entered into this Stipulation of Settlement
19 solely with the intention to avoid further disputes and litigation with the attendant inconvenience
20 and expenses.

21 ENFORCEMENT ACTIONS

22 32. The Parties agree that the San Joaquin County Superior Court shall retain
23 jurisdiction to enforce the terms of this Settlement pursuant to California Code of Civil Procedure
24 Section 664.6. In the event one or more of the Parties to this Stipulation of Settlement institutes
25 any legal action or other proceeding against any other Party or Parties to enforce the provisions of
26 this Stipulation of Settlement or to declare rights or obligations under this Stipulation of
27 Settlement, the successful party or Parties shall be entitled to recover from the unsuccessful Party
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1 or Parties' reasonable attorneys' fees and litigation costs, including expert witness fees incurred in
2 connection with any enforcement actions.

3 NOTICES

4 33. Unless otherwise specifically provided herein, all notices, demands or other
5 communications given hereunder shall be in writing and shall be deemed to have been duly given
6 as of the third business day after mailing by United States registered or certified mail, return receipt
7 requested, addressed as follows:

8 **To Plaintiff and the Settlement Class:**

9 Galen T. Shimoda, Esq.
10 SHIMODA LAW CORP.
11 9401 East Stockton Boulevard, Suite 120
12 Elk Grove, California 95624

13 **To Defendants:**

14 Cary G. Palmer, Esq.
15 JACKSON LEWIS P.C.
16 400 Capitol Mall, Suite 1600
17 Sacramento, CA 95814

18 NO PUBLIC COMMENT

19 34. The Class Representative and Class Counsel will not make any public disclosure of
20 the Settlement or this Confidential Memorandum of Understanding, except through Court filings
21 to approve the Settlement. Class Counsel will take all steps necessary to ensure that the Class
22 Representative is aware of, and will ensure that Class Representative adheres to the restriction
23 against any public disclosure of the Settlement or this Confidential Memorandum of
24 Understanding. Following preliminary Court approval of the Settlement, the Class Representative
25 and Class Counsel will not initiate any communications (directly or indirectly) with the media
26 regarding the Action. Class Counsel will take all steps reasonably necessary to ensure the Class
27 Representative is aware of, and will ensure that he will adhere to, the restriction against any media
28 comment on the Settlement and its terms.

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CLASS MEMBER SIGNATORIES

40. It is agreed that because the members of the Class are so numerous, it is impossible or impractical to have each member of the Class execute this Stipulation of Settlement. The Notice of Pendency of Class Action and Proposed Settlement will advise all Class Members of the binding nature of the release, and the release shall have the same force and effect as if this Stipulation of Settlement were executed by each member of the Class.

COUNTERPARTS

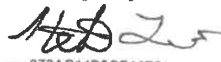
41. This Stipulation of Settlement may be executed in counterparts and by facsimile signatures, and when each party has signed and delivered at least one such counterpart, each counterpart, including e-mail and PDF versions, shall be deemed an original and, when taken together with other signed counterparts, shall constitute one Stipulation of Settlement binding upon and effective as to all Parties.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Settlement and Release between Plaintiff and Defendants as of the date(s) set forth below:

Plaintiff and Class Representative

Dated: 11/30/2021

DocuSigned by:



HECTOR LEON

Defendants

GOLDEN BAY FENCE PLUS IRON WORKS, INC.

Dated: _____

By: _____
Authorized Officer or Agent

Dated: _____

PAUL CHAVEZ

Dated: _____

NICHOLAS CHAVEZ

1 CLASS MEMBER SIGNATORIES

2 40. It is agreed that because the members of the Class are so numerous, it is impossible
3 or impractical to have each member of the Class execute this Stipulation of Settlement. The Notice
4 of Pendency of Class Action and Proposed Settlement will advise all Class Members of the binding
5 nature of the release, and the release shall have the same force and effect as if this Stipulation of
6 Settlement were executed by each member of the Class.

7 COUNTERPARTS

8 41. This Stipulation of Settlement may be executed in counterparts and by facsimile
9 signatures, and when each party has signed and delivered at least one such counterpart, each
10 counterpart, including e-mail and PDF versions, shall be deemed an original and, when taken
11 together with other signed counterparts, shall constitute one Stipulation of Settlement binding upon
12 and effective as to all Parties.

13 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
14 Joint Stipulation of Settlement and Release between Plaintiff and Defendants as of the date(s) set
15 forth below:

16 Plaintiff and Class Representative

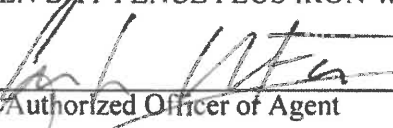
17 Dated: _____

18 HECTOR LEON

19 Defendants

20 GOLDEN BAY FENCE PLUS IRON WORKS, INC.

21 Dated: 11/30/21

22 By: 
Authorized Officer of Agent

23 Dated: 11/30/21

24 RALPH CHAVEZ

25 Dated: 11/30/21

26 NICHOLAS CHAVEZ
27
28

1 APPROVED AS TO FORM:

SHIMODA LAW CORP.

2
3 Dated: 12/1/21

By: 
Galen T. Shimoda
Justin P. Rodriguez
Jessica L. Hart
Attorneys for Plaintiff and Class Members

6
7 JACKSON LEWIS P.C.

8 Dated: 12.03.21

By: 
Cary G. Palmer
Evan D. Beecher
Attorneys for Defendants

EXHIBIT 1

CLAIM FORM
LEON V. GOLDEN BAY FENCE PLUS IRON WORKS, INC.
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN JOAQUIN
CASE NO. STK-CV-UOE-2021-0000543

You must complete this Claim Form to be eligible for a monetary recovery. Incomplete and/or late Claim Forms will be rejected. You must complete, sign, date and mail this Claim Form by first-class mail postmarked on or before _____, and addressed to the claims administrator at the following address in order to be eligible to receive a settlement payment. Whether you are a current or former non-exempt employee in California, your decision as to whether or not to submit this Claim Form will in no way affect your employment with Golden Bay Fence Plus Iron Works, Inc., Paul Chavez, and Nicholas Chavez ("Defendants"). Defendants will not retaliate against you in any way for making a claim in this case.

MAIL TO: Simpluris, Inc. 3176 Pullman Street, Suite 123 Costa Mesa, CA 92626 Telephone: 1 (800) 779-2104
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INSTRUCTIONS

- A. You must complete, sign, date and mail this Claim Form to be eligible for a settlement award. Your Claim Form must be filled out completely, signed, dated and postmarked on or before _____, or it will be rejected and will not entitle you to any monetary recovery.
- B. You are responsible for maintaining a copy of the fully completed Claim Form and proof of mailing.
- B. If you move, please send the Claims Administrator, Simpluris, Inc., your new address. It is your responsibility to keep a current address on file with the Claims Administrator.

(1) Please review the following identifying information, and make any necessary changes in the right-hand column:

Claim # First, Last c/o Address1 Address2 City, State, Zip, Country () Area Code Work Telephone Number	Name/Address Changes (if any): _____ _____ _____ () Area Code Home Telephone Number
--	--

(2) Weeks Worked During Class Period: According to Defendants' records, you worked _____ workweeks in California as a non-exempt employee between January 22, 2017, and [Preliminary Approval Date] ("Class Period"). Your individual share of the Settlement is estimated to be approximately \$ _____.

(3) If you disagree with the number of workweeks stated in Paragraph (2) above, please indicate how many workweeks you believe you worked as a non-exempt employee in California during the Class Period and explain why you believe Defendants' records are mistaken:

If you dispute the number of workweeks as stated in Paragraph (2) above, Defendants' records will control unless you are able to provide documentation with this Claim Form that establishes otherwise, and that Defendants' records are mistaken. If there is a dispute about whether Defendants' information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Claims Administrator as described in the Notice of Proposed Class Action Settlement, and Hearing Date for Final Court Approval of Settlement that accompanies this Claim Form. Such a determination by the Claims Administrator will be final and binding with no opportunity for further appeal.

Please Note: All Settlement Awards are subject to taxation as wages and will be reported to the IRS and state tax authorities. You will receive IRS Forms W-2 and 1099-MISC covering your Settlement Award. Although Defendants have your Social Security Number, your check will be issued by the Claims Administrator. Accordingly, you must complete the below form.

Taxpayer Identification Number Certification – Substitute IRS Form W-9

Enter your Social Security Number (SSN): _____ - _____ - _____

Print name as shown on your income tax return if different from [name]

Name: _____
(First) (Middle) (Last)

Under penalty of perjury, I certify that;

1. The taxpayer identification number shown on this form is my correct taxpayer identification number, **and**
2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, **and**
3. I am a U.S. person (including a U.S. resident alien). Please Circle One: Yes No

Note: If you have been notified by the IRS that you are subject to backup withholding, you must cross out item 2 above.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the above information is true and correct.

Signature: _____ Date: ____/____/____

The IRS does not require your consent to any provision of this document other than this Form W-9 certification to avoid backup withholding.

My signature below constitutes a full and complete release by me of: Golden Bay Fence Plus Iron Works, Inc., Paul Chavez, and Nicholas Chavez ("Defendants"); each of Defendants' respective past, present and future parents, subsidiaries and affiliates; the past, present and future partners, shareholders, directors, officers, agents, employees, attorneys, insurers, predecessors, successors and assigns of any of the foregoing; and any individual or entity which could be jointly liable with any of the foregoing (collectively "Released Parties"). For all claims under state, federal and local law that were or could have been asserted based on the facts and allegations made in the Action, and any amendments thereto, as to the Class Members, including without limitation, California Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 246, 246.5, 247, 248.5, 256, 510, 512, 558, 558.1, 1174, 1193.6, 1194, 1194.2, 1197.1, 2802, 2699, *et seq.*, California's Minimum Wage Order, California Industrial Commission Wage Orders, Cal. Code Regs., Title. 8, section 11040, *et seq.*, and Business and Professions Code sections 17200, *et seq.*, and including all claims for alleged unpaid wages, rounding time entries, overtime or double time wages, minimum wages, timely payment of wages during employment, timely payment of wages at separation, rest periods and rest period premiums, meal periods and meal period premiums, off-the-clock work, wage statements, payroll records and recordkeeping, unreimbursed business expenses, personal phone usage, personal vehicle usage, failure to provide paid sick leave, failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or matching benefits for payments received under the Settlement, unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, class actions, representative actions, aggrieved party claims, injunctive relief, declaratory relief, liquidated damages, penalties of any nature (including but not limited to civil penalties, waiting-time penalties, wage statement penalties, and PAGA penalties), interest, fees, costs, as well as all other claims and allegations alleged in the Action, from January 22, 2017 through the date the Court finally approves the Settlement (collectively "Released Claims"). I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

(Sign your name here)

(Date)

EXHIBIT 2

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

HECTOR LEON, individually and on behalf of all other
similarly situated employees,

Plaintiff,

vs.

GOLDEN BAY FENCE PLUS IRON WORKS, INC., a
California Corporation; PAUL CHAVEZ, an individual;
NICHOLAS CHAVEZ, an individual; and DOES 1 to 100,
inclusive,

Defendants.

Case No. STK-CV-UOE-2021-0000543

**NOTICE OF PROPOSED CLASS ACTION
SETTLEMENT, AND HEARING DATE FOR FINAL
COURT APPROVAL OF SETTLEMENT**

ATTENTION: ALL PERSONS EMPLOYED BY GOLDEN BAY FENCE PLUS IRON WORKS, INC. AS NON-EXEMPT EMPLOYEES IN CALIFORNIA FROM JANUARY 22, 2017, THROUGH [PRELIMINARY APPROVAL DATE]:

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO RECEIVE PAYMENT OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

IF YOU DO NOT WISH TO RECEIVE PAYMENT UNDER THE SETTLEMENT OR PARTICIPATE IN THE SETTLEMENT YOU MUST REQUEST TO BE EXCLUDED FROM THE SETTLEMENT CLASS ON OR BEFORE _____, 2022.

Pursuant to the Order Granting Preliminary Approval of Class Action and PAGA Settlement of the Superior Court of the State of California for San Joaquin County entered _____, 2021, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

A class action settlement has been reached between the Parties in the above-captioned lawsuit pending in the Superior Court of the State of California for the County of San Joaquin on behalf of all individuals employed by Golden Bay Fence Plus Iron Works, Inc. as non-exempt employees in California between January 22, 2017 and [Preliminary Approval Date] (the "Settlement Class" or "Class Members"); the Settlement Class does not include persons who submit valid Requests for Exclusion (as explained below), or who previously settled, released or received awards for claims covered by the Settlement.

The "Released Parties" in the Action include (i) Golden Bay Fence Plus Iron Works, Inc., Paul Chavez, and Nicholas Chavez ("Defendants"); (ii) each of Defendants' respective past, present and future parents, subsidiaries and affiliates; (iii) the past, present and future partners, shareholders, directors, officers, agents, employees, attorneys, insurers, predecessors, successors and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing

You have received this notice because records indicate you worked as a non-exempt employee in California for Defendants during the Class Period (defined below). This notice is to advise you of how you can either participate in the Settlement or be excluded from the Settlement.

I. BACKGROUND OF THE CASE

On January 22, 2021, Plaintiff Hector Leon ("Plaintiff" or "Class Representative") filed a complaint against Defendants in the San Joaquin County Superior Court on behalf of himself and other non-exempt employees who worked for Defendants in California for alleged violations of the California Labor Code. ("Complaint"). The term "Action" means this putative class and Private Attorneys General Act ("PAGA") action pending in San Joaquin County Superior Court, Case No. STK-CV-UOE-2021-0000543. The Class Period is between January 22, 2021, and [Preliminary Approval Date] (the "Class Period").

Plaintiff's Complaint alleges a failure to pay overtime wages, failure to pay minimum wages, failure to provide meal periods, failure to provide rest breaks, failure to provide accurate wage statements, failure to timely pay wages, failure to reimburse expenses, unfair competition, and a PAGA cause of action, on behalf of all non-exempt employees who worked for Defendants in California from January 22, 2017, to the present. Plaintiff's Complaint seeks recovery of penalties, interest, and attorneys' fees and costs. Defendants deny all claims, and deny that Plaintiff and the Class Members are entitled to any recovery.

The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in extensive private settlement negotiations. Based upon the negotiations, and all know facts and circumstances, including the various risks and uncertainties related to legal actions including the complete defenses to liability potentially available to Defendants, the inherent risk of trial on the merits, the risk of denial of class certification, and the delays associated with litigation, the Parties reached a class-wide Settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Settlement, Defendants continue to deny all allegations and claims.

The Parties have since entered into a Joint Stipulation of Settlement and Release between Plaintiff and Defendants, which has been preliminarily approved by the Court.

If you are part of the Settlement Class, you have the opportunity to participate in the Settlement, or to exclude yourself ("opt out") from the Settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Settlement, Defendants agree to pay on a claims made basis up to a Maximum Settlement Amount of \$300,000 for all claims, damages, attorneys' fees, costs, the enhancement award, employer payroll taxes, penalties, and claims administration expenses ("Maximum Settlement Amount"). Deducted from this Maximum Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed thirty-five percent (35%) of the Maximum Settlement Amount which equals \$105,000, attorneys' costs not to exceed \$10,000, an Enhancement Award to the Class representative not to exceed \$15,000, the fees and expenses of the Claims Administrator estimated not to exceed \$6,500, the employer payroll taxes on the wage portion of the Settlement Awards, and \$7,500 payable to the California Labor and Workforce Development Agency ("LWDA") for alleged PAGA penalties, which will result in a "Net Settlement Amount" for distribution to all Class Members. As explained further below, the amount of each Class Member's Settlement Award will depend on the number of weeks worked by participating Class Members during the Class Period and the number of Class Members who submit claims.

The Claim Form will list for each Class Member the number of weeks each Class Member worked during Class Period and his/her estimated Settlement Award.

B. Settlement Formula, and Settlement Awards

Defendants will pay Settlement Awards through a Claims Administrator, as described below, to each Class Member who submits a timely Claim Form and has not submitted a Request for Exclusion from the Settlement. All Settlement Awards will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Settlement Awards payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 1/3 alleged unpaid wages for which IRS Forms W-2 will issue and 2/3 for alleged unpaid penalties and interest for which IRS Forms 1099-MISC will issue.

Settlement Awards to Class Members will be based on the number of weeks worked by individual Class Members during the Class Period. The number of workweeks will be determined by reference to Defendants' records. The Claims Administrator or Defendants, based on Defendants' records, will calculate the number of workweeks for each Class Member during the Class Period. The number of weeks worked will be calculated by dividing by seven the total number of days worked by the Class Member for Defendants in California during the Class Period. Partial workweeks will not be counted, meaning incomplete workweeks will be rounded down; however, if a Class Member worked only one day as a Class Member, such Class Member will be credited with having worked one workweek for purposes of the Settlement. For any amount of the Net Settlement Sum not claimed by Class Members by submitting timely valid Claim Forms or because a Class Member opted out of this Settlement, the Parties agree that the minimum amount to be paid to Class Members who submit valid claims (*i.e.*, the settlement floor) will be 50 percent of the Net Settlement Amount; if the amount claimed by Class Members is less than 50 percent, the amount to be paid to Class Members who submit valid claims will be increased pro rata until 50 percent of the Net Settlement Amount is paid out. Any unclaimed residue remaining in the Net Settlement Amount will remain Defendants' sole and exclusive property.

Receipt of the Settlement Awards will not entitle any Class Member to additional compensation or benefits under any company compensation or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendants' Records

For each Class Member, the amount payable to the Class Member will be calculated by the Claims Administrator from

Defendants' records. Defendants' records will be presumed correct, unless evidence to the contrary is provided to the Claims Administrator. Defendants' records and any additional evidence will be reviewed by the Claims Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendants' records, all supporting documents evidencing additional workweeks must be submitted by the Class Member with the Claim Form. The dispute will be resolved by the Claims Administrator as described in Section E below.

D. Release of Claims

The Joint Stipulation of Settlement and Release between Plaintiff and Defendants contains a release which releases Defendants and the Released Parties from all claims under state, federal and local law that were or could have been asserted based on the facts and allegations made in the Action, and any amendments thereto, as to the Class Members, including without limitation, California Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 246, 246.5, 247, 248.5, 256, 510, 512, 558, 558.1, 1174, 1193.6, 1194, 1194.2, 1197.1, 2802, 2699, *et seq.*, California's Minimum Wage Order, California Industrial Commission Wage Orders, Cal. Code Regs., Title. 8, section 11040, *et seq.*, and Business and Professions Code sections 17200, *et seq.*, and including all claims for alleged unpaid wages, rounding time entries, overtime or double time wages, minimum wages, timely payment of wages during employment, timely payment of wages at separation, rest periods and rest period premiums, meal periods and meal period premiums, off-the-clock work, wage statements, payroll records and recordkeeping, unreimbursed business expenses, personal phone usage, personal vehicle usage, failure to provide paid sick leave, failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or matching benefits for payments received under the Settlement, unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, class actions, representative actions, aggrieved party claims, injunctive relief, declaratory relief, liquidated damages, penalties of any nature (including but not limited to civil penalties, waiting-time penalties, wage statement penalties, and PAGA penalties), interest, fees, costs, as well as all other claims and allegations alleged in the Action, from January 22, 2017 through the date the Court finally approves the Settlement (collectively "Released Claims").

E. Resolution of Workweek Disputes

If a Class Member disputes the accuracy of Defendants' records as to the number of workweeks worked, any documentation supporting such dispute must be submitted to the Claims Administrator with the Claim Form. All workweek disputes will be resolved and decided by the Claims Administrator, and the Claims Administrator's decision on all disputes will be final and binding.

F. Enhancement Award for the Class Representative

Subject to approval by the Court, Class Representative will receive an Enhancement Award up to \$15,000.00. This payment will be made for his service as a Class Representative, including active participation in prosecution of the Action, as well as willingness to accept the risk of incurring Class Counsel's costs or paying Defendants' attorneys' fees and costs for an unsuccessful outcome in the Action. The Class Representative also signed a general release of all claims, which is broader than the release applicable to all other Class Members, to be eligible for the Enhancement Award.

G. Attorneys' Fees and Costs

As consideration for the Settlement and in exchange for the release by the Settlement Class, Defendants agrees to pay Class Counsel's attorneys' fees and costs to be set by the Court, up to a maximum of thirty-five percent (35%) of the Maximum Settlement Amount which equals \$105,000, and attorneys' costs not to exceed \$10,000. Class Counsel's attorneys' fees and costs will be paid and deducted from the Maximum Settlement Amount.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Excluding Yourself from the Settlement

If you do not wish to participate in the Settlement, you may be excluded (*i.e.*, "opt out") by submitting a timely written request to the Claims Administrator stating you have received notice of the Settlement, decided not to participate in the Settlement, and desire to be excluded from the Settlement, or words to that effect ("Request for Exclusion"). Your Request for Exclusion must also state your full name, address, date of birth, and the dates you were employed by Defendants as a non-exempt employee in California. The Request for Exclusion must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

Simpluris, Inc.
3176 Pullman Street, Suite 123
Costa Mesa, CA 92626

The Request for Exclusion must be postmarked no later than _____, 2021. If you submit a Request for Exclusion which is not postmarked by _____, 2021, your Request for Exclusion will be rejected and you will be bound by the Release and all other Settlement terms. If the Request for Exclusion is sent from within the United States it must be sent through the United States Postal Service by First Class Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your Request for Exclusion.

Any person who submits a complete and timely Request for Exclusion shall, upon receipt by the Claims Administrator, no longer be a Class Member, shall be barred from participating in any portion of the Settlement, shall not be entitled to object to the Settlement, shall receive no benefits from the Settlement, shall not be deemed to have relinquished the Released Claims against the Released Parties, and, at his or her own expense, may pursue any claims he or she may have against the Released Parties. If an individual submits both an executed Claim Form and a Request for Exclusion, the Request for Exclusion will be deemed invalid, and the individual will be included in the Settlement Class and will be bound by the terms of the Settlement.

B. Objection to Settlement

If you do not exclude yourself from the Settlement, you can object to the terms of the Settlement before Final Approval. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. To object, you may file a written objection and a notice of intention to appear at the Final Approval hearing currently set for _____, 2021, _____ Department _____. You must file the written objection and notice of intention to appear at the Final Approval Hearing with the Office of the Clerk of the San Joaquin County Superior Court, at 180 E Weber Ave., Suite 200, CA Stockton, CA 95202, and send copies to the Claims Administrator, and Counsel as follows:

CLASS COUNSEL

Galen T. Shimoda, Esq.
SHIMODA LAW CORP.
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624

DEFENDANTS' COUNSEL

Cary G. Palmer, Esq.
JACKSON LEWIS P.C.
400 Capitol Mall, Suite 1600
Sacramento, CA 95814

Any written objection must state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, date of birth, and the dates of you were employed as a non-exempt employee in California by Defendants. To be valid and effective, any objections to approval of the Settlement must be filed with the Clerk of the Court and delivered to the Claims Administrator and each of the above-listed attorneys no later than 60 calendar days after the Claims Administrator mails the Notice and the Claim Form to the Class Members. **DO NOT TELEPHONE THE COURT.**

However, a Class Member may appear at the Final Approval Hearing, either in person or through their own counsel, and object to the Settlement Agreement and any of its terms without submitting a prior objection in the manner and by the deadline specified above. If you choose to file an objection to the terms of this Settlement, you may enter an appearance *in propria persona* (meaning you choose to represent yourself) or through your own attorney at your own expense. To do so, you must file an Entry of Appearance with the Clerk of the Calaveras County Superior Court, and deliver copies to the Claims Administrator and each of the attorneys listed above. Such Entry of Appearance must be filed with the Court and delivered to the above attorneys no later than 60 days after the Claims Administrator mails the Notice and the Claim Form to Class Members. You will then continue as a Settlement Class Member either *in propria persona* or with representation by your own attorney, and you will be solely responsible for the fees and costs of your own attorney. The final fairness hearing at which the Court will be asked to approve the Settlement will be at _____ /a.m./p.m. (Pacific Time) on _____, 2022, in Department _____, Superior Court of the State of California for the County of San Joaquin, _____, or such other later date as the Court may authorize.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

Upon Final Approval being granted by the Court, each and every Class Member, who does not opt out of the Settlement, will release Defendants and the Released Parties from the Released Claims as described above. In other words, if you were employed as a Class Member by Defendants in California during the Class Period, and you do not exclude yourself from the Settlement Class, you will be deemed to have entered into this release and to have released the above-described Released Claims even if you do not submit a Claim Form. In addition, you will be barred from ever suing Defendants and the Released Parties with respect to the Released Claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department ____ of the Superior Court of the State of California for the County of San Joaquin _____, on _____, 2022, at ____ /a.m./p.m. (Pacific Time), to determine whether the Settlement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs, the costs of administration, and the Enhancement Award to be paid to the Class Representative. Class Counsel's application for attorneys' fees and litigation costs will be on file with the Court no later than _____, 2022, and will be available for review after that date. Class Counsel are seeking approval of a total of not more than thirty-five percent (35%) of the Settlement for attorneys' fees which equals \$105,000, and not more than \$10,000 for attorneys' costs.

The hearing may be continued without further notice to the Settlement Class. It is not necessary for you to appear at this hearing, unless you wish to object to the Settlement.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should consult the detailed Joint Stipulation of Class Action and PAGA Settlement and Release between Plaintiff and Defendants ("Settlement Agreement") which is on file with the Clerk of the Court. The pleadings and other records in this Action, including the Settlement Agreement, may be examined at any time during regular business hours at the Office of the Clerk of the San Joaquin at 180 E Weber Ave., Suite 200, CA Stockton, CA 95202. You may also visit www._____.com, which will include links to the Settlement Agreement, Class Notice, Motions for Preliminary and Final Approval, and Motion for Attorneys' Fees as they become available.

If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel:

Galen T. Shimoda, Esq.
SHIMODA LAW CORP.
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624

(916) 525-0716 Telephone
(916) 760-3733 Facsimile
Email: attorney@shimodalaw.com

**PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR
INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS.**

BY ORDER OF THE SUPERIOR COURT

EXHIBIT 3

GALEN T. SHIMODA (SBN 226752)
JUSTIN P. RODRIGUEZ (SBN 278275)
JESSICA L. HART (SBN 331441)
SHIMODA LAW CORP.
9401 East Stockton Boulevard, Suite 120
Elk Grove, California 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff HECTOR LEON,
on behalf of himself and similarly situated employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

HECTOR LEON, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

GOLDEN BAY FENCE PLUS IRON
WORKS, INC., a California Corporation;
PAUL CHAVEZ, an individual;
NICHOLAS CHAVEZ, an individual; and
DOES 1 to 100, inclusive,

Defendants.

CASE NO. STK-CV-UOE-2021-0000543

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date:
Time:
Dept.:
Judge:

Filed: January 22, 2021
Trial Date: None Set

[PROPOSED] ORDER GRANTING PRELIM. APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of a Class Action and PAGA Settlement came before this
3 Court, on _____, in Department ____ before the Honorable _____, presiding. The
4 Court having considered the papers submitted in support of the application of the parties, HEREBY
5 ORDERS THE FOLLOWING:

6 1. The Court grants preliminary approval of the Settlement and the Settlement Class based
7 upon the terms set forth in the Joint Stipulation of Settlement and Release Between Plaintiff and
8 Defendants ("Stipulation of Settlement") filed herewith. All terms used herein shall have the same
9 meaning as defined in the Stipulation of Settlement.

10 2. The settlement set forth in the Joint Stipulation of Settlement and Release Between
11 Plaintiff and Defendants appears to be fair, adequate and reasonable to the Class. The Settlement falls
12 within the range of reasonableness and appears to be presumptively valid, subject only to any objections
13 that may be raised at the final fairness hearing and final approval by this Court.

14 3. A final fairness hearing on the question of whether the proposed Settlement, attorneys'
15 fees to Class Counsel, costs of administration and the Class Representatives' Enhancement Award
16 should be finally approved as fair, reasonable, and adequate as to the members of the Class is scheduled
17 in Department _____ on the date and time set forth in the implementation schedule in Paragraph 10 below.

18 4. This Court approves, as to form and content, the Claim Form (Exhibit 1), and the Notice
19 of Pendency of Class Action, Proposed Settlement and Hearing Date for Final Court Approval
20 ("Notice") (Exhibit 2). The Court approves the procedure for Class Members to participate in, to opt
21 out of, and to object to, the Settlement as set forth in the Joint Stipulation of Settlement and Release
22 Between Plaintiff and Defendants and Notice.

23 5. The Court directs the mailing of the Notice of Pendency of Class Action and Proposed
24 Settlement, and the Claim Form by first class mail to the Class Members in accordance with the
25 Implementation Schedule set forth below. The Court finds the dates selected for the mailing and
26 distribution of the Notice and the Claim Form, as set forth in the Implementation Schedule, meet the
27 requirements of due process and provide the best notice practicable under the circumstances and shall
28 constitute due and sufficient notice to all persons entitled thereto.

6. It is ordered that the Settlement Class is preliminarily certified for settlement purposes only.

7. The Court confirms Plaintiff Hector Leon as Class Representative, and Galen T. Shimoda, Justin P. Rodriguez and Jessica L. Hart of Shimoda Law Corp. as Class Counsel.

8. The Court confirms the appointment of Simpluris, Inc. as the Claims Administrator.

9. To facilitate administration of the Settlement pending final approval, the Court hereby enjoins Plaintiff and all Class Members from filing or prosecuting any claims, suits or administrative proceedings (including filing claims with the Division of Labor Standards Enforcement of the California Department of Industrial Relations) regarding claims released by the Settlement, unless and until such Class Members have filed valid Requests for Exclusion with the Claims Administrator and the time for filing claims with the Claims Administrator has elapsed.

10. The Court orders the following Implementation Schedule for further proceedings:

a.	Deadline for Defendant to Submit Class Member Information to Claims Administrator	[30 calendar days after Order granting Preliminary Approval]
b.	Deadline for Claims Administrator to Mail Notice and Claim Form to Class Members	[60 calendar days after Order granting Preliminary Approval]
c.	Deadline for Class Members to Postmark Claim Forms	[60 calendar days after mailing of the Notice and Claim Form]
d.	Deadline for Class Members to Postmark Requests for Exclusion	[60 calendar days after mailing of the Notice and Claim Form]
e.	Deadline for Receipt by Court, Claims Administrator, and Counsel of any Objections to Settlement	[60 calendar days after mailing of the Notice and Claim Form]
f.	Deadline for Class Counsel to file Motion for Final Approval of Settlement, including Request for Attorneys' Fees, Costs, and Enhancement Award	[16 Court days before Final Approval Hearing]

g.	Deadline for Claims Administrator to file Declaration of Due Diligence and Proof of Mailing	[16 Court days before Final Approval Hearing]
h.	Deadline for Defendant to provide written Notice of Rescission of Settlement to Class Counsel (if applicable)	[10 calendar days before Final Approval Hearing, provided the number and percentage of opt outs previously provided to Defendant]
i.	Final Fairness Hearing and Final Approval	Date: _____ Time: _____ Department: _____
j.	Deadline for Defendant to fund settlement	[21 calendar days after Effective Date]
k.	Deadline for Claims Administrator to mail the Settlement Awards, the Enhancement Award, and the Attorneys' Fees and Costs (if Settlement is Effective)	[35 calendar days after Effective Date]
l.	Deadline for Class Members to cash settlement checks (if Settlement is Effective)	[120 calendar days after Claims Administrator mails the Settlement Awards and the Enhancement Awards]
m.	Deadline for Claims Administrator to distribute uncashed check amount to <i>cy pres</i> beneficiaries (if Settlement is Effective)	[Within 14 calendar days after the deadline for class members to cash Settlement checks]
n.	Claims Administrator to File Proof of Payment of Settlement Awards, Enhancement Award, Attorneys' Fees and Costs, <i>cy pres</i> payments, and payment to the LWDA (if Settlement is Effective)	[Within 21 calendar days after the deadline for Claims Administrator to pay and unclaimed residue from uncashed checks to <i>cy pres</i> beneficiaries]

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT

EXHIBIT 4

GALEN T. SHIMODA (SBN 226752)
JUSTIN P. RODRIGUEZ (SBN 278275)
JESSICA L. HART (SBN 331441)
SHIMODA LAW CORP.
9401 East Stockton Boulevard, Suite 120
Elk Grove, California 95624
Telephone: (916) 525-0716
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Attorneys for Plaintiff HECTOR LEON,
on behalf of himself and similarly situated employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

HECTOR LEON, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

GOLDEN BAY FENCE PLUS IRON
WORKS, INC., a California Corporation;
PAUL CHAVEZ, an individual; NICHOLAS
CHAVEZ, an individual; and DOES 1 to 100,
inclusive,

Defendants.

CASE NO. STK-CV-UOE-2021-0000543

CLASS ACTION

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

Date:
Time:
Dept.:
Judge:

Filed: January 22, 2021
Trial Date: None Set

TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

The above-referenced class action ("Action") having come before the Court on _____, in Department ____ before the Honorable _____, presiding for a hearing and Order Granting Final Approval of Class Action and PAGA Settlement and Judgement ("Final Order"), consistent with the Court's Preliminary Approval Order ("Preliminary Approval Order"), filed and entered _____, and as set forth in the Joint Stipulation of Settlement and Release Between Plaintiff and Defendants ("Stipulation") in the Action, and due and adequate notice having been given

1 to all Class Members as required in the Preliminary Approval Order, and the Court having considered
2 all papers filed and proceedings had herein and otherwise being fully informed and good cause appearing
3 therefore, it is hereby **ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

4 1. All terms used herein shall have the same meaning as defined in the Stipulation.

5 2. Consistent with the definitions provided in the Stipulation, the term "Settlement Class"
6 and "Class Members" shall mean the following: all persons employed by Defendants as non-exempt
7 employees in California between January 22, 2017, and _____ [Preliminary Approval Date].
8 The Settlement Class, however, shall not include any person who previously settled or released the
9 claims covered by this Settlement, any person who previously was paid or received awards through civil
10 or administrative actions for the claims covered by this Settlement, or any person who submitted a timely
11 and valid Request for Exclusion as provided in this Settlement. The "Class Period" shall be January 22,
12 2017, through _____ [Preliminary Approval Date]. For purposes of the Settlement and this
13 Final Order, "Released Parties" as referenced herein and as released in the Settlement shall collectively
14 mean: (i) Golden Bay Fence Plus Iron Works, Inc., Paul Chavez, and Nicholas Chavez ("Defendants");
15 (ii) each of Defendants' respective past, present and future parents, subsidiaries and affiliates; (iii) the
16 past, present and future partners, shareholders, directors, officers, agents, employees, attorneys, insurers,
17 predecessors, successors and assigns of any of the foregoing; and (iv) any individual or entity which
18 could be jointly liable with any of the foregoing. The term "Action" shall mean this class action.

19 3. This Court has jurisdiction over the subject matter of this Action and over all Parties to
20 this Action, including all Class Members.

21 4. Distribution of the Notice and the Claim Form directed to the Class Members as set forth
22 in the Stipulation and the other matters set forth therein has been completed in conformity with the
23 Preliminary Approval Order, including notice to all Class Members who could be identified through
24 reasonable effort, is the best notice practicable under the circumstances. The Notice provided due and
25 adequate notice of the proceedings and of the matters set forth therein, including the proposed Settlement
26 set forth in the Stipulation, to all persons entitled to such Notice, and the Notice fully satisfied the
27 requirements of due process. All Class Members and all Released Claims are covered by and included
28 within the Settlement and this Final Order.

1 5. The Court hereby finds the Settlement was entered into in good faith pursuant to and
2 within the meaning of California Code of Civil Procedure section 877.6. The Court further finds that
3 the Settlement is fair, adequate, and reasonable and that Plaintiff has satisfied the standards and
4 applicable requirements for final approval of this class action settlement under California law, including
5 the provisions of California Code of Civil Procedure section 382 and Federal Rule of Civil Procedure
6 23, approved for use by the California state courts in *Vasquez v. Superior Court* (1971) 4 Cal.3d 800,
7 821.

8 6. The Court hereby approves the Settlement set forth in the Stipulation and finds that the
9 Settlement is, in all respects, fair, adequate, and reasonable, and directs the Parties to effectuate the
10 Settlement according to its terms. The Court finds that the Settlement has been reached as a result of
11 intensive, serious and non-collusive arms-length negotiations. The Court further finds that the Parties
12 have conducted extensive investigation and research, and counsel for the Parties are able to reasonably
13 evaluate their respective positions. The Court also finds that Settlement at this time will avoid additional
14 substantial costs, as well as avoid the delay and risks that would be presented by the further prosecution
15 of the Action. The Court has reviewed the benefits that are being granted as part of the Settlement and
16 recognizes the significant value to the Class Members. The Court also finds that the Class is properly
17 certified as a class for settlement purposes only.

18 7. As of the date of entry of this Final Order, each and every Released Claim (as defined in
19 the Stipulation and set forth below) of each and every Class Member is and shall be deemed to be
20 conclusively released as against the Released Parties. As of the date of this Final Order, the Class
21 Representatives and each and every Class Member who has not submitted a valid Request for Exclusion
22 is hereby released and forever barred and enjoined from prosecuting the Released Claims, except as to
23 such rights or claims as may be created by the Settlement, against Defendants and the Released Parties
24 from any and all claims under state, federal and local law that were or could have been asserted based
25 on the facts and allegations made in the Action, and any amendments thereto, as to the Class Members,
26 including without limitation, California Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 246,
27 246.5, 247, 248.5, 256, 510, 512, 558, 558.1, 1174, 1193.6, 1194, 1194.2, 1197.1, 2802, 2699, *et seq.*,
28

1 California's Minimum Wage Order, California Industrial Commission Wage Orders, Cal. Code Regs.,
2 Title. 8, section 11040, *et seq.*, and Business and Professions Code sections 17200, *et seq.*, and including
3 all claims for alleged unpaid wages, rounding time entries, overtime or double time wages, minimum
4 wages, timely payment of wages during employment, timely payment of wages at separation, rest
5 periods and rest period premiums, meal periods and meal period premiums, off-the-clock work, wage
6 statements, payroll records and recordkeeping, unreimbursed business expenses, personal phone usage,
7 personal vehicle usage, failure to provide paid sick leave, failure to pay additional 401(k) benefits and/or
8 deferred compensation benefits and/or matching benefits for payments received under the Settlement,
9 unfair competition, unfair business practices, unlawful business practices, fraudulent business practices,
10 class actions, representative actions, aggrieved party claims, injunctive relief, declaratory relief,
11 liquidated damages, penalties of any nature (including but not limited to civil penalties, waiting-time
12 penalties, wage statement penalties, and PAGA penalties), interest, fees, costs, as well as all other claims
13 and allegations alleged in the Action, from January 22, 2017 through the date the Court finally approves
14 the Settlement (collectively "Released Claims").
15

16 The release of claims shall not include any claims that cannot be released as a matter of law. In
17 addition, as of the date of this Final Order, the Class Representative and the Settlement Class, and each
18 member of the Class who has not submitted a valid Request for Exclusion, is forever barred, and
19 enjoined from instituting or accepting damages or obtaining relief against the Released Parties for any
20 period from January 22, 2017, up to and including the date of final approval of the Settlement, relating
21 to the Released Claims.

22 8. Neither the Settlement nor any of the terms set forth in the Stipulation is an admission
23 by Defendants, or any of the other Released Parties, nor is this Final Order a finding of the validity of
24 any claims in the Action or of any wrongdoing by Defendants, or any of the other Released Parties.
25 Neither this Final Order, the Stipulation, nor any document referred to herein, nor any action taken to
26 carry out the Stipulation is, may be construed as, or may be used as, an admission by or against
27 Defendants, or any of the other Released Parties, of any fault, wrongdoing, or liability whatsoever. The
28 entering into or carrying out of the Stipulation, and any negotiations or proceedings related thereto, shall

1 not in any event be construed as, or deemed to be evidence of, an admission or concession with regard
2 to the denials or defenses by Defendants, or any of the other Released Parties, and shall not be offered
3 in evidence in any action or proceeding in any court, administrative agency or other tribunal for any
4 purpose whatsoever other than to enforce the provisions of this Final Order, the Stipulation, the Released
5 Claims, or any related agreement or release. Notwithstanding these restrictions, any of the Released
6 Parties may file in the Action, or submit in any other proceeding, the Final Order, the Stipulation, and
7 any other papers and records on file in the Action as evidence of the Settlement to support a defense of
8 *res judicata*, *collateral estoppel*, release, or other theory of claim or issue preclusion or similar defense
9 as to the Released Claims.

10 9. The Court hereby enters judgment in the entire Action as of the filing date of this Final
11 Order, pursuant to the terms set forth in the Stipulation. Without affecting the finality of this Final Order
12 in any way, the Court hereby retains continuing jurisdiction over the interpretation, implementation and
13 enforcement of the Settlement and all orders entered in connection therewith pursuant to California Code
14 of Civil Procedure section 664.6.

15 10. The Court finds the settlement payments provided for under the Settlement to be fair and
16 reasonable in light of all of the circumstances. The Court orders the calculations and the payments to
17 be made and administered in accordance with the terms of the Settlement.

18 11. The Court hereby confirms Galen T. Shimoda, Justin P. Rodriguez and Jessica L. Hart
19 of Shimoda Law Corp. as Class Counsel in the Action.

20 12. The Court further finds that the common fund doctrine is applicable to this Action
21 because there is a sufficiently identifiable class of beneficiaries (the Class), the benefits can be accurately
22 traced to the Settlement that Plaintiff and Class Counsel negotiated on behalf of the Class, and the fee
23 can be shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage
24 of the common fund. *See Serrano v. Priest* (1977) 20 Cal.3d 25, 34-35. The Court finds the attorneys'
25 fees request of thirty-five percent (35%) of the common fund to be appropriate compensation for Class
26 Counsel. The attorneys' fees request is within the range that has been approved by other Courts in
27 similar cases and reasonable in light of the circumstances of this case, the substantial and beneficial
28 results obtained on behalf of the Class, and the contingent nature of the recovery over the course of this

1 Action, which included potential loss at summary judgment, certification, and/or trial proceedings.
2 Pursuant to the terms of the Settlement, and the authorities, evidence and argument submitted by Class
3 Counsel, the Court hereby awards Class Counsel attorneys' fees in the amount of \$105,000.00 and
4 attorneys' costs in the amount of \$ _____, from the Gross Settlement Amount as final payment for
5 and complete satisfaction of any and all attorneys' fees and costs incurred by and/or owed to Class
6 Counsel and any other person or entity related to the Action. The Court further orders that the award of
7 attorneys' fees and costs set forth in this Paragraph shall be administered pursuant to the terms of the
8 Stipulation, and made payable to and deposited into the bank account of "Shimoda Law Corp." as Class
9 Counsel in the Action.

10 13. The Court also hereby approves and orders an Enhancement Award to Plaintiff and Class
11 Representative Hector Leon in the amount of \$15,000.00 from the Gross Settlement Amount.

12 14. The Court also hereby approves and orders payment in the amount of \$7,500.00 from the
13 Gross Settlement Amount for PAGA penalties, payable to the California Labor and Workforce
14 Development Agency.

15 15. The Court also hereby approves and orders payment from the Gross Settlement Amount
16 for actual claims administration expenses incurred by the Claims Administrator, Simpluris, Inc. in the
17 amount of \$ _____.

18 16. The Court also hereby approves and orders that any residue from uncashed settlement
19 award checks after the expiration date will be split 50/50 and paid out in equal shares to Koinonia Family
20 Services, a non-profit 501(c)(3) organization with child advocacy programs within the State of
21 California, and Capital Pro Bono, Inc., as the *cy pres* recipients pursuant to Code of Civil Procedure
22 section 384(b); any residue received by Koinonia Family Services shall be used solely for child advocacy
23 programs within the State of California pursuant to Code of Civil Procedure section 384(b).

24 17. The Court also hereby finds and orders that the Stipulation is and constitutes a fair,
25 adequate, and reasonable compromise of the Released Claims against Defendants and the Released
26 Parties.

27 18. Provided the Settlement becomes effective under the terms of the Stipulation, the Court
28 also hereby orders that the deadline for mailing the Court-approved Settlement Awards, attorneys' fees

1 and costs, and Enhancement Awards is as set forth in the Implementation Schedule within the
2 Preliminary Approval Order.

3 19. The Court also hereby finds that there were no objections to the Settlement raised by any
4 person on the record at the hearing on the Final Order.

5 **IT IS SO ORDERED. LET JUDGMENT BE ENTERED ACCORDINGLY.**

6
7 Dated: _____

8 JUDGE OF THE SUPERIOR COURT
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EXHIBIT B

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Renald Konini (Cal. State Bar No. 312080)
3 Jessica L. Hart (Cal State Bar No. 331441)
Shimoda Law Corp.
4 9401 East Stockton Boulevard, Suite 120
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6 Attorneys for Plaintiff HECTOR LEON, individually and
7 on behalf of all other similarly situated employees

Electronically Filed
Superior Court of California
County of San Joaquin
2021-01-22 15:03:25
Clerk: Kristy Kobus

Case Management Conference
07/21/2021 08:30 AM in 11B

STK-CV-UOE-2021-0000543

8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN JOAQUIN**

10 HECTOR LEON, individually and on behalf
11 of all other similarly situated employees,

12 Plaintiff,

13 vs.

14 GOLDEN BAY FENCE PLUS IRON
15 WORKS, INC., a California Corporation;
16 PAUL CHAVEZ, an individual; NICHOLAS
17 CHAVEZ, an individual; and DOES 1 to 100,
inclusive,

18 Defendants.

Case No.

CLASS ACTION

COMPLAINT FOR DAMAGES:

1. Failure to Pay Overtime Wages
(Labor Code §§ 510, 1194)
2. Failure to Pay Minimum Wages
(Labor Code § 1194)
3. Meal Period Violations
(Labor Code §§ 512, 226.7)
4. Rest Period Violations
(Labor Code §§ 226.7)
5. Wage Statement Violations
(Labor Code § 226)
6. Waiting Time Penalties
(Labor Code §§ 201-203)
7. Failure to Reimburse Expenses
(Labor Code § 2802)
8. Unfair Competition (Business &
Professions Code § 1700, *et seq.*)
9. Private Attorneys General Act
(Labor Code §§ 2699, *et seq.*)

DEMAND FOR JURY TRIAL

FILED BY FAX

1 Plaintiff HECTOR LEON ("Plaintiff"), on behalf of himself and all other similarly situated
2 employees, hereby files this Complaint against Defendants GOLDEN BAY FENCE PLUS IRON
3 WORKS, INC., a California Corporation; PAUL CHAVEZ, an individual; NICHOLAS CHAVEZ,
4 an individual; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants").
5 On information and belief, Plaintiff alleges the following:

6 INTRODUCTION

7 1. This is a class action and Private Attorneys General Act ("PAGA") lawsuit brought by
8 Plaintiff seeking damages and penalties for unpaid overtime and minimum wages, unpaid meal and rest
9 period premiums, unpaid reimbursement expenses, and derivative penalties for inaccurate wage
10 statements and for failure to keep accurate time records. Plaintiff seeks these unpaid wages and
11 penalties, plus interest and attorney's fees, on behalf of himself and similarly situated employees.

12 2. During all relevant times, Plaintiff and similarly situated employees worked for
13 Defendants as hourly, non-exempt employees. Over the course of Plaintiff and similarly situated
14 employees' employment, Defendants intentionally denied minimum wages and overtime wages owed
15 due to a uniform and improper rounding policy. Specifically, it was Defendants policy to convert raw
16 time entries by employees into rounded, reduced total daily hours. It was from these reduced daily hour
17 totals that Defendants then calculated wages owed, which resulted in a forfeiture of minimum and
18 overtimes wages for time worked. In addition to this, Defendants routinely denied Plaintiff and
19 similarly situated employees' meal periods in compliance with the law and refused to allow employees
20 all legal rest breaks. Finally, Defendants failed to pay Plaintiff and similarly situated employees'
21 reimbursements for their required use of personnel cells phones for work purposes. As a result of these
22 uniform practices, Defendants did not properly itemize and identify Plaintiff and similarly situated
23 employees' total hours worked, applicable hourly rates, or the corresponding hours worked at each
24 hourly rate on their wage statements, and, further, did not pay Plaintiff and similarly situated employees
25 all wages due to them at the time of their separation or termination.

26 JURISDICTION AND VENUE

27 3. The San Joaquin County Superior Court has jurisdiction in this matter pursuant to
28 California Code of Civil Procedure section 410.10 to determine alleged violations of the California

1 Labor Code, California Business and Professions Code, and Wage Order No. 16.

2 4. Venue is proper pursuant to Civil Procedure Code sections 395(a), and 395.5, in that
3 some of the wrongful acts and violations of law asserted herein occurred within San Joaquin County,
4 and Defendants' obligation to pay wages arose in San Joaquin County, pursuant to *Madera Police*
5 *Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

6 5. Plaintiff has sought permission pursuant to California Labor Code section 2699, *et seq.* to
7 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
8 of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
9 Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency
10 ("LWDA") on approximately November 12, 2020. Plaintiff provided facts and legal bases for his
11 claims within the notice to the LWDA on all violations asserted under the Private Attorneys General Act
12 cause of action. Plaintiff also submitted the \$75.00 filing fee. The November 12, 2020, notice was also
13 sent via certified mail to Defendants on the same day. To date, the LWDA has not provided any
14 response to Plaintiff's notice correspondence. Accordingly, Plaintiff has exhausted all administrative
15 remedies pursuant to the Private Attorneys General Act ("PAGA") and may bring this action on behalf
16 of himself and all similarly situated employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code §
17 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19
18 (2005). Aggrieved Employees include, but is not limited to, the following: all individuals in California
19 who have, or continue to, perform work for Defendants from one-year prior to November 12, 2020.

20 PARTIES

21 6. HECTOR LEON is an individual over the age of eighteen (18) and is a resident of the
22 State of California.

23 7. On information and belief, Plaintiff alleges, GOLDEN BAY FENCE PLUS IRON
24 WORKS, INC., is now and/or at all times mentioned in this Complaint was a California Corporation
25 and the owner and operator of an industry, business and/or facility doing business in the State of
26 California.

27 8. On information and belief, Plaintiff alleges, PAUL CHAVEZ, is now and/or at all
28 times mentioned in this Complaint was an individual and the owner and operator of an industry,

1 business and/or facility doing business in the State of California. Plaintiff is informed and believes,
2 and thereupon alleges, that PAUL CHAVEZ is an individual over the age of eighteen (18) and is a
3 resident of the State of California. Plaintiff further alleges that PAUL CHAVEZ is an owner,
4 director, officer, and/or managing agent of GOLDEN BAY FENCE PLUS IRON WORKS, INC.
5 responsible for causing the violations outlined in the first through ninth causes of action. As such
6 PAUL CHAVEZ is individually liable pursuant to California Labor Code section 558.1.

7 9. On information and belief, Plaintiff alleges, NICHOLAS CHAVEZ, is now and/or at
8 all times mentioned in this Complaint was an individual and the owner and operator of an industry,
9 business and/or facility doing business in the State of California. Plaintiff is informed and believes,
10 and thereupon alleges, that NICHOLAS CHAVEZ is an individual over the age of eighteen (18) and
11 is a resident of the State of California. Plaintiff further alleges that NICHOLAS CHAVEZ is an
12 owner, director, officer, and/or managing agent of GOLDEN BAY FENCE PLUS IRON WORKS,
13 INC. responsible for causing the violations outlined in the first through ninth causes of action. As
14 such, NICHOLAS CHAVEZ is individually liable pursuant to California Labor Code section 558.1.

15 10. Defendants DOES 1 through 100 are affiliates, subsidiaries, and related entities and the
16 alter egos of each of the other Defendants named herein, corporate, or otherwise, who participated in
17 and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the
18 true names and capacities of these DOE Defendants when they are ascertained. At all times mentioned
19 herein, each Defendant was the agent or employee of each of the other Defendants and was acting within
20 the course and scope of such agency or employment. The Defendants are jointly and severally liable to
21 Plaintiff.

22 11. At all times mentioned herein, each Defendant was the agent or employee of each of the
23 other Defendants and was acting within the course and scope of such agency or employment. The
24 Defendants are jointly and severally liable to Plaintiff.

25 12. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
26 were members of and/or engaged in a joint employment, joint venture, partnership, and common
27 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
28 joint venture, partnership, and common enterprise.

13. Defendants, and each of them, now and/or at all times mentioned in this Complaint approved, ratified, acquiesced, aided, or abetted the acts and omissions alleged in this Complaint.

14. Defendants proximately caused Plaintiff and similarly situated employees to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

CLASS ALLEGATIONS

15. Plaintiff brings the First through Eighth Causes of Action on behalf of himself and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiff seeks to represent is composed of, and defined, as follows:

Plaintiff and similarly situated employees who have or continue to work for Defendants in California from four (4) years prior to the filing of this Complaint to the present.

16. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) Numerosity: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed as many as one hundred (100) individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) Common Questions Predominate: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

- i. Whether Defendants kept an accurate record of all hours worked by Plaintiff and members of the Plaintiff's Class;
- ii. Whether Defendants paid Plaintiff and members of the Plaintiff's Class for all hours worked;

- 1 iii. Whether Defendant paid Plaintiff and members of the Plaintiff's Class at least
2 minimum wage for all hours worked;
- 3 iv. Whether Defendants properly paid Plaintiff and members of the Plaintiff's Class
4 for all overtime hours worked;
- 5 v. Whether Plaintiff and members of the Plaintiff's Class worked over eight (8)
6 hours in a day;
- 7 vi. Whether Plaintiff and members of the Plaintiff's Class worked over forty (40)
8 hours in a week;
- 9 vii. Whether Defendants had a policy and/or practice of failing to pay Plaintiff and
10 members of the Plaintiff's Class for all hours worked;
- 11 viii. Whether Defendants had a policy and/or practice of rounding time entries which
12 resulted in the underpayment of wages for Plaintiff and members of the Plaintiff's
13 Class for all hours worked;
- 14 ix. Whether Defendants had a policy and/or practice of failing to pay Plaintiff and
15 members of the Plaintiff's Class for all overtime hours worked;
- 16 x. Whether Defendants had a policy and/or practice allowing for or providing
17 Plaintiff and members of the Plaintiff's Class meal periods as required by law;
- 18 xi. Whether Defendants had a policy and/or practice allowing for or providing
19 Plaintiff and members of the Plaintiff's Class rest periods as required by law;
- 20 xii. Whether Defendants accurately stated all required information on paystubs issued
21 to Plaintiff and members of the Plaintiff's Class, including the inclusive dates of
22 each pay period;
- 23 xiii. Whether Defendants had a policy and/or practice that provided reimbursement of
24 business expenses owed to Plaintiff and members of the Plaintiff's Class;
- 25 xiv. Whether Defendants provided Plaintiff and members of the Plaintiff's Class their
26 final wages in compliance with Labor Code sections 201 to 203.

27 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
28 class. The putative class also sustained damages arising out of Defendants' common

1 course of conduct in violation of the law as complained of herein. Plaintiff and all
2 members of the putative class were non-exempt employees who were not paid properly
3 for all hours worked, were not provided legally mandated rest and meal periods, and were
4 not paid reimbursements for personal cell phone use resulting in a failure to pay all
5 reimbursements owed, overtime wages, minimum wages, and meal and rest period
6 premiums. Additionally, Defendants issued Plaintiff and all members of the putative
7 class wage statements that did not comply with Labor Code section 226. As a result,
8 Plaintiff and each member of the putative class will have suffered the same type of harm
9 and seek the same type of recovery based on the same legal theories.

10 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
11 putative class. For all relevant times, Plaintiff resided in California and worked for
12 Defendants in California. Moreover, Plaintiff is an adequate representative of the
13 putative class as Plaintiff has no interests that are adverse to those of putative class
14 members. Additionally, Plaintiff has retained counsel who has substantial experience in
15 complex civil litigation and wage and hour matters.

16 (e) Superiority: A class action is superior to other available means for the fair and efficient
17 adjudication of the controversy since individual joinder of all members of the putative
18 class is impracticable. Class action treatment will permit a larger number of similarly
19 situated persons to prosecute their common claims in a single forum simultaneously,
20 efficiently, and without the unnecessary duplication of effort and expense that numerous
21 individual actions would engender. Further, as damages suffered by each individual
22 member of the class may be relatively small, the expenses and burden of the individual
23 litigation would make it difficult or impossible for individual members of the class to
24 redress the wrongs done to them, and an important public interest will be served by
25 addressing the matter as a class action. The cost to the court system of adjudication of
26 such individualized litigation would be substantial. Individualized litigation would also
27 present the potential for inconsistent or contradictory judgments.

28 //

17. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

GENERAL ALLEGATIONS

18. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 17 as though fully set forth herein.

19. Plaintiff worked for Defendants as a driver and shop laborer from approximately October 2018 through May 2019 and then again from September 2019 through March 2020. As part of his job duties, Plaintiff spent approximately fifty (50) percent of his time in the company shop and the other fifty (50) percent of his time on the road picking up, or delivering items, for Defendants. Plaintiff and similarly situated employees typically worked over eight (8) hours per day and forty (40) hours per week.

20. Despite this, Defendants failed to pay Plaintiff and similarly situated employees for all hours worked. First, Defendants had a policy of requiring Plaintiff and similarly situated employees to arrive to work approximately thirty (30) minutes early to prepare their workstations before clocking in to work. Defendants did not compensate employees for this preparation time. Second, Defendants had a time rounding policy that denied Plaintiff and similarly situated employees earned wages. Specifically, Defendants rounded Plaintiff and similarly situated employees' time clock punches and written time entries (when they were working off-site) to the nearest half hour.

21. Pursuant to Defendants' workplace policy, employees were required to use a punch clock at the company shop to clock in and out, or, alternatively, notate their clock in and out times in writing when they were working off-site. Unbeknownst to Plaintiff and similarly situated employees, however, Defendants did not use these time entries to calculate wages owed. Instead, Defendants would round this time into total daily hours (*e.g.* 8, 7.5, 10 hours) on a weekly timesheet. Defendants would then use this rounded time, recorded on a weekly timesheet, to calculate total wages owed. This rounding policy resulted in minimum wages and overtime being forfeited by Plaintiff and similarly situated employees. This policy also had the effect of essentially writing out from the record, any meal period violations that the time entries would have revealed. An example of how Defendants rounded and recorded Plaintiff

and similarly situated employees' hours worked can be seen in the below weekly time sheet created by Defendants. A timesheet like this was created for each week worked.

Employee Number: 222		Weekending: 2/8/20	
Employee Name: Leon Hector			
Date:	Day:	Job #	Hours
	Sunday		
3 rd	Monday	SHOP	8
4 th	Tuesday		8
5 th	Wednesday		10
6 th	Thursday		8
7 th	Friday		8
8 th	Saturday		4
TOTAL:			46

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22. Further, Plaintiff and similarly situated employees were regularly required to work through meal breaks, or take meal breaks late, if at all, especially when they were working on the road. In fact, when Plaintiff did stop the truck and attempt to take a meal break, he would often receive calls from management telling him to get moving and get back on the road. As a result, Plaintiff and similarly situated employees did not receive a meal period, or begin their first meal period, before completion of their fifth hour of work on multiple occasions. Defendants' weekly time sheets also did not record meal breaks taken, even though Plaintiff and similarly situated employees did punch in and out, or manually record, meal breaks. Finally, when Plaintiff and similarly situated employees worked beyond ten (10) hours, Defendants failed to provide a second meal period.

23. Defendants also failed to provide rest breaks of at least ten (10) minutes to Plaintiff and similarly situated employees every four (4) hours or major fraction thereof. In fact, when Plaintiff and similarly situated employees did attempt to take their ten (10) minute rest periods, they were

1 admonished by management and told to immediately get back to work. Defendants' strict policy against
2 providing rest breaks was so extreme that Plaintiff and similarly situated employees were literally forced
3 to sprint back and forth when they needed to use the restroom.

4 24. Additionally, during Plaintiff's employment with Defendants, he was required to use his
5 own cell phone for work purposes and was not reimbursed by Defendants. Other similarly situated
6 employees also used their cellphones for work purposes and Defendants did not reimburse them for this
7 use. At some times during Plaintiff's employment, he was also required to use his personal vehicle for
8 work purposes and was not reimbursed for mileage.

9 25. As a result of Defendants' failure to pay Plaintiff and similarly situated employees for all
10 hours worked, Defendants failed to provide all final wages owed to Plaintiff and similarly situated
11 employees within twenty-four (24) hours of their termination or seventy-two (72) hours of their
12 resignation. In addition, Defendants failed to provide Plaintiff and similarly situated employees with
13 accurate wage statements. The wage statements Defendants provided to Plaintiff and similarly situated
14 employees did not accurately state their total regular hours worked, gross wages and net wages, and all
15 deductions made. As result, the calculated sick leave was inaccurate, and the wage statements were
16 defective. The wage statements were also defective because they failed to include the inclusive dates of
17 each pay period, as the wage statements only provided the period ending date and check date. As result,
18 the calculated sick leave was inaccurate, and the wage statements were defective.

19 26. At all times mentioned herein, Defendants PAUL CHAVEZ and NICK CHAVEZ were
20 officers, directors, shareholders, and/or managing agents of Defendants responsible for the violations
21 stated herein as they were in a position of authority with the power and responsibility to monitor,
22 institute, and/or modify the unlawful practices, but chose to ratify them instead.

23 **CAUSES OF ACTION**

24 **FIRST CAUSE OF ACTION**
25 **FAILURE TO PAY OVERTIME WAGES**
26 **(As to all Defendants)**

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

//

1 28. During the period Plaintiff was employed by Defendants, Defendants were required to
2 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
3 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
4 hours worked in excess of twelve (12) hours per day. *See, e.g.*, IWC Wage Order No. 16, § (3)(A); Cal.
5 Lab. Code §§ 510, 1194.

6 29. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
7 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
8 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
9 worked at their regular rate of pay.

10 30. Plaintiff and similarly situated employees were not exempt from overtime protections
11 employees under the California Wage Orders and Labor Code.

12 31. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
13 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
14 the extent pertinent as if set forth here in full.

15 **SECOND CAUSE OF ACTION**
16 **FAILURE TO PAY MINIMUM WAGES**
 (As to all Defendants)

17 32. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 31 as though fully
18 set forth herein.

19 33. For the period preceding the filing of this Complaint, Defendants were required to
20 compensate Plaintiff and similarly situated employees with at least California's applicable minimum for
21 every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 16, § 4(A); Cal. Lab. Code § 1194.

22 34. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants were aware of
23 their obligation to pay the minimum wage for each hour worked but failed to do so.

24 35. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
25 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
26 the extent pertinent as if set forth here in full.

27 //

28 //

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

36. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 35 as though fully set forth herein.

37. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

38. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 16, section 10(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

39. California Labor Code section 512 and Wage Order No. 16 section 10(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

40. Defendants employed Plaintiff and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated employees to take their first meal period before the completion of their fifth hour of work and failed to allow Plaintiff and similarly situated employees to take their second meal period before the completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their rights to all meal periods throughout their employment.

41. Defendants further failed to pay Plaintiff and similarly situated employees the applicable meal period premiums for any such missed meal breaks.

42. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(As to all Defendants)

43. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 42 as though fully set forth herein.

44. An employer must provide an employee a rest period in accordance with the applicable Wage Order and California Labor Code section 226.7.

45. California Labor Code section 226.7 and Wage Order No. 16, section 11(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

46. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly situated employees to take paid rest periods of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof.

47. Defendants further failed to pay Plaintiff and similarly situated employees the applicable rest period premiums for any such missed rest periods.

48. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

49. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 48 as though fully set forth herein.

50. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee

1 *identification number other than a social security number, (8) the name*
2 *and address of the legal entity that is the employer and, if the employer is*
3 *a farm labor contractor, as defined in subdivision (b) of Section 1682, the*
4 *name and address of the legal entity that secured the services of the*
5 *employer, and (9) all applicable hourly rates in effect during the pay*
6 *period and the corresponding number of hours worked at each hourly rate*
7 *by the employee. The deductions made from payment of wages shall be*
8 *recorded in ink or other indelible form, properly dated, showing the*
9 *month, day, and year, and a copy of the statement and the record of the*
10 *deductions shall be kept on file by the employer for at least three years at*
11 *the place of employment or at a central location within the State of*
12 *California.*

13 51. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
14 itemized statement or failed to provide an accurate and complete itemized statement showing the
15 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
16 accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime and
17 double time hours worked and corresponding rates of pay, and gross and net wages earned. The
18 paystubs also did not accurately state the inclusive dates of the pay period for which Plaintiff and
19 similarly situated employees were paid. As a result of receiving defective paystubs, Plaintiff and
20 similarly situated employees were not able to promptly and easily determine their total hours worked
21 from their paystubs alone. Additionally, Plaintiff and similarly situated employees suffered confusion
22 over whether they received all wages owed and were prevented from effectively challenging information
23 on their wage statements.

24 52. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
25 employees have been damaged as stated in the section below entitled "DAMAGES," which is
26 incorporated here to the extent pertinent as if set forth here in full.

27 **SIXTH CAUSE OF ACTION**
28 **WAITING TIME PENALTIES**
(As to all Defendants)

53. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 52 as though fully
set forth herein.

54. An employer must pay an employee who is terminated all unpaid wages immediately
upon termination. *See* Cal. Lab. Code § 201.

55. An employer must pay an employee who resigns all unpaid wages within seventy-two
(72) hours of their resignation. *See* Cal. Lab. Code § 202.

56. Plaintiff and similarly situated employees did not receive all wages, including minimum and overtime wages, meal and rest period premiums, or all sick leave pay owed at their termination or within the required time after their separation from employment.

57. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. *See* Cal. Lab. Code § 203.

58. Defendants knew of their obligation to pay Plaintiff and similarly situated employees' their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff and similarly situated employees were being underpaid minimum and overtime wages and meal period premiums because Defendants themselves rounded the time entered by Plaintiff and similarly situated employees and then used this reduced, rounded time to calculate wages owed. Such conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining wages owed.

59. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE EXPENSES
(As to all Defendants)

60. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 59 as though fully set forth herein.

61. California Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

62. Defendants required Plaintiff and similarly situated employees to use their personal phone for work purposes both while they were at, and away from, the worksite but failed to reimburse them for such use.

63. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION

(As to GOLDEN BAY FENCE PLUS IRON WORKS, INC. and DOES 1 to 100)

64. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 63 as though fully set forth herein.

65. Unfair competition shall mean and include any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See* California Business and Professions ("B&P") Code § 17200.

66. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages, and meal and rest period premiums, paid sick leave, or reimbursed for business expenses, during their employment or any time thereafter.

67. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal.4th 163 (2000).

68. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, 2802 and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

69. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 68 as though fully set forth herein.

//

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
 - d. Liquidated damages pursuant to California Labor Code section 1194.2;
4. As to the Third Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
5. As to the Fourth Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
6. As to the Fifth Cause of Action:
 - a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);
 - b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

1 7. As to the Seventh Cause of Action:

- 2 a. An amount to be proven at trial;
- 3 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

4 8. As to the Ninth Cause of Action:

- 5 a. For civil penalties as provided for in the Labor Code for each enumerated
- 6 violation;
- 7 b. For those Labor Code sections, the violation of which there is no civil penalty
- 8 provided, the default penalty provided in Labor Code section 2699(f): for any
- 9 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
- 10 period; For any subsequent violation, two hundred dollars (\$200) for each
- 11 aggrieved employee per pay period;
- 12 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- 13 d. For any other remedies as allowed by law and/or deemed appropriate by the
- 14 Court;

15 9. For such other and further relief as this Court may deem just and proper,

16 including, but not limited to:

- 17 a. Wages as proved at trial;
- 18 b. Injunctive and Declaratory relief;
- 19 c. Attorney's fees and costs as provided for by law; and
- 20 d. Interest.

21

22 Dated: January 22, 2021

Shimoda Law Corp.

23

24 By: 

25 Galen T. Shimoda
26 Justin P. Rodriguez
27 Brittany V. Berzin
28 Renald Konini
 Jessica L. Hart
 Attorneys for Plaintiff

EXHIBIT C



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November 12, 2020

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Leon v. Golden Bay Fence Plus Iron Works, Inc., et al.*

Dear Labor Commissioner,

As counsel for Hector Leon ("Plaintiff"), I am writing to provide you and the following "employers" notice pursuant to California Labor Code section 2699.3:

Golden Bay Fence Plus Iron Works, Inc.
4104 B. Street
Stockton, CA 95206

Paul Chavez
4104 B. Street
Stockton, CA 95206

Nick Chavez
4104 B. Street
Stockton, CA 95206

We are setting forth the "facts and theories" to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Golden Bay Fence Plus Iron Works, Inc., and owners Paul Chavez and Nick Chavez ("Defendants"). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to, the following: all individuals in California who have, or continue to, perform work for Defendants. Plaintiff is clearly entitled to bring a Private Attorneys General Act ("PAGA") claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).



A. FACTS

Plaintiff worked for Defendants as a driver and shop laborer from approximately October 2018 through May 2019 and then again from September 2019 through March 2020. As part of his job duties, Plaintiff spent approximately fifty (50) percent of his time in the company shop and the other fifty (50) percent of his time on the road picking up or delivering items for Defendants. Plaintiff and Aggrieved Employees typically worked over eight (8) hours per day and forty (40) hours per week.

Defendants failed to pay Plaintiff and Aggrieved Employees for all hours worked. Specifically, Defendants' rounded Plaintiff's and Aggrieved Employees' time clock punches and written time entries to the nearest half hour. Although there was a punch clock at the shop, Defendants would round the total daily time entered by employees to the nearest half hour. Defendants would then record these rounded hours as total hours worked per day (e.g. 8, 7.5, 10 hours) on a weekly timesheet. Similarly, when Plaintiff and Aggrieved Employees were working on the road, they would manually record their daily start and end times. Like the shop hours, Defendants would round this time to the nearest half hour and record it on the weekly timesheets. This rounding policy resulted in minimum wages and overtime being forfeited by Plaintiff and Aggrieved Employees.

Further, Plaintiff and Aggrieved Employees were regularly required to work through meal breaks, or take meal breaks late, if at all, especially when they were working on the road. In fact, when Plaintiff did stop the truck and attempt to take a meal break, he would often receive calls from management telling him to get moving and get back on the road. As a result, Plaintiff and Aggrieved Employees did not receive a meal period, or begin their first meal period, before completion of their fifth hour of work on multiple occasions. Defendants' weekly time sheets also did not record meal breaks taken, even though Plaintiff and Aggrieved Employees did punch in and out, or manually record, meal breaks. Finally, when Plaintiff and Aggrieved Employees worked beyond ten (10) hours, Defendants failed to provide a second meal period.

Defendants also failed to provide rest breaks of at least ten (10) minutes to Plaintiff and Aggrieved Employees every four (4) hours or major fraction thereof. In fact, when Plaintiff and Aggrieved Employees did attempt to take their ten (10) minute rest periods, they were admonished by management and told to immediately get back to work. Defendants' strict policy against providing rest breaks was so extreme that Plaintiff and Aggrieved Employees were literally forced to sprint back and forth to the restrooms to use the bathroom.

Additionally, for the first four (4) to five (5) months of Plaintiff's employment when he started working again in October 2019, he was required to use his own cell phone and personal vehicle work purposes and was not reimbursed by Defendants. Other Aggrieved Employees similarly used their cellphones for work purposes and Defendants did not reimburse them for this use.



As a result of Defendants' rounding policy and failure to pay minimum wages, Defendants failed to provide all final wages owed to Plaintiff and Aggrieved Employees within twenty-four (24) hours of their termination or seventy-two (72) hours of their resignation. In addition, Defendants failed to provide Plaintiff and Aggrieved Employees with accurate wage statements. The wage statements Defendants provided to Plaintiff and Aggrieved Employees did not accurately state their total regular hours worked, gross wages and net wages, and all deductions made. As result, the calculated sick leave was inaccurate, and the wage statements were defective.

At all times mentioned herein, Paul Chavez and Nick Chavez were officers, directors, shareholders, and/or managing agents of Defendants responsible for the violations stated herein as they were in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead.

B. ALLEGATIONS AND CHARGES

Count 1 – Violation of Labor Code §§ 510, 1194; IWC Wage Order 16, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

Count 2 – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay Minimum Wages)

During the period Plaintiff and Aggrieved Employees were employed by Defendants they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. *See, e.g.,* IWC Wage Order MW-2019; IWC Wage Order No. 16, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did not pay Plaintiff and Aggrieved Employees for all hours worked. Thus, Plaintiff and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.



Count 3 - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 16, §§ 10(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 16, section 10(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 16, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendants also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

Count 4 – Violation of Labor Code § 226.7 and Wage Order No. 16, § 11(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 16, section 11(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendants also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

Count 5 – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” For the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.



Count 6 – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including regular and overtime wages and meal and rest period premiums, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

Count 7 – Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Defendants failed to pay any reimbursements for worked-related cell phone and vehicle use by Plaintiff and Aggrieved Employees. This was in violation of the law.

Count 8 – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf on an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendants, by and through Defendants agents, violated Plaintiff and Aggrieved Employees’ rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. Paul Chavez and Nick Chavez were officers, directors, shareholders, and/or managing agents of Defendants responsible for the violations stated herein as they were in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.

Count 9 – Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each



violation in a subsequent citation. Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendants failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Plaintiff and Aggrieved Employees' wage records and hours worked. This was against the law.

Count 10 – Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked that begins to accrue at the commencement of employment. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than twenty-four (24) hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. An employer may limit the use of sick leave to either twenty-four (24) hours or the equivalent of three (3) days, whichever is greater, during a year period. However, employers using an accrual method rather than a lump sum method must allow employees to accrue up to forty-eight (48) hours or the equivalent of six (6) days at any given time. Employers must authorize employees to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy Families Act of 2014 ("HWHFA") for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. Any sick leave taken must be paid at the employee's regular rate of pay. For the reasons state above, Defendants failed to provide Plaintiff and Aggrieved Employees with sick leave meeting the requirements set forth in HWHFA. Plaintiff will be seeking equitable, injunctive, and restitutionary relief to remedy these violations.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda Law Corp.

By: _____

Galen T. Shimoda

GTS:jh

cc: Client via e-mail

1 *Leon v. Golden Bay Fence Plus Iron Works, Inc.*

2 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
3 **and California Rules of Court, Rule 1.21 and Rule 2.150**

4 I, Rashelle M. Cota, declare that:

5 I am a citizen of the United States and am over the age of eighteen years and not a party to
6 the within above-entitled action.

7 On November 12, 2020, I served the following documents on the party below:

8 • Amended Private Attorney General Act Letter

9 Golden Bay Fence Plus Iron Works, Inc. 10 4104 B. Street 11 Stockton, CA 95206	Nick Chavez 4104 B. Street Stockton, CA 95206
12 Paul Chavez 13 4104 B. Street 14 Stockton, CA 95206	

15 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection
16 and processing of correspondence for mailing with the United States Postal
17 Service and that each day's mail is deposited with the United States Postal
18 Service that same day in the ordinary course of business. On the date set forth
19 above, I served the aforementioned document(s) on the parties in said action by
20 placing a true copy thereof enclosed in a sealed envelope with postage thereon
21 fully prepaid, for collection and mailing on this date, following ordinary business
22 practices, at Elk Grove, California, addressed as set forth above.

23 [] [By Personal Service] By personally delivering a true copy thereof to the office
24 of the addressee above.

25 [] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
26 above. No error was reported by the e-mail service that I used.

27 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
28 personally delivered via the following overnight courier service:_____.

I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct, and that this declaration was executed on November 12, 2020, at Elk Grove,
California.



Rashelle M. Cota

EXHIBIT D



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Estimate #:	13940V2	Prepared By:	Michael Sutherland
Estimate Date:	10/4/2021	Direct Dial #	321-223-5067
		Email:	msutherland@simpluris.com

Plaintiff Attorney
Attorney/Client: **Jessica Hart**
Firm: Shimoda Law
<Associate@shimodalaw.com>

Defense Attorney
Attorney/Client:
Firm:

Case Name: Leon v. Golden Bay Fence Plus Iron Works: PAGA/Class Settlement

Anticipated Total Cost	\$5,957
Capped Fee*	\$5,900

Terms:

1) Capped Fees assume that Simpluris will receive data in a Single Excel file with no substantial change in class size or response rate.

Total Possible Class Size:	180	Undeliverable Rate:	10%
Response Rate:	50%	Call Rate:	5%
Mailing Document Language:	English, Spanish	Fund Distribution:	Simpluris
Reminder Postcard:	Yes	Redistribution:	No
Unclaimed Funds:	Cy Pres	State(s):	Single
		Tax Year	One

Case Setup

Data Compilation: Develop Case Specific Response Tracking - Error Reports

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$125.00	3	\$375.00
Translation	\$0.25	2500	\$625.00
Database Manager - Initial Data Analysis	\$140.00	3	\$420.00
		Total	\$1,420.00

Notification

Notice Packet: 5 pg Notice, - Double Sided - English

Category	Unit Value	# of Units	Total
Mail Notice Packet	\$1.25	180	\$225.00
Postage	\$0.58	180	\$104.40
NCOA/CASS/LACS	\$0.10	180	\$18.00
Undeliverable Processing	\$0.25	18	\$4.50
Skip Trace RUM	\$2.00	18	\$36.00
Remail Notice	\$1.50	15	\$22.95
Remail Postage	\$0.58	15	\$8.87
Reminder PC	\$0.45	90	\$40.50
Postage	\$0.36	90	\$32.40
Mailing Supervisor	\$50.00	2	\$100.00
		Total	\$592.62

Call Center

Establish Case Specific Toll Free Number

Category	Unit Value	# of Units	Total
Customer Service Reps/Call Center Support	\$75.00	2	\$150.00
800 # Charges	\$0.10	120	\$12.00
		Total	\$150.00



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800-779-2104 www.simpluris.com

Administration

Process Mail, Opt-Outs or Objections

Category	Unit Value	# of Units	Total
Database Manager	\$125.00	1	\$125.00
Resolving Mismatched TINs	\$75.00	1	\$75.00
Dispute/Deficiencies - Send One Cure Letter	\$1.50	2	\$3.00
Claim Processing	\$1.50	90	\$135.00
Data Entry	\$50.00	1	\$50.00
Project Manager	\$125.00	1	\$125.00
Weekly Reporting to Counsel	WAIVED	12 Wks of Reporting	\$0.00
Total			\$513.00

Distribution

Setup a Disbursement Account

Print & Mail Checks to Class Members: W2, 1099's - File Reports with Appropriate Federal & State Taxing Authorities

Account Management & Reconciliation

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$140.00	3	\$420.00
Disbursement Manager - Data Validation	\$75.00	1	\$75.00
Setup Banking Account/QSF	\$300.00	1	\$300.00
Print & Mail Check	\$3.00	90	\$270.00
Postage	\$0.58	90	\$52.20
Process Returned Checks	\$0.50	1	\$0.45
Skip Trace Search Undeliverable Checks	\$3.00	1	\$2.70
Remail Checks	\$3.00	1	\$2.70
Postage	\$0.58	1	\$0.52
QSF Account Reconciliation	\$250.00	1	\$250.00
Individual Federal/State Tax Reporting	\$350.00	1	\$350.00
QSF Reporting/Declaration	\$300.00	1	\$300.00
QSF Annual Tax Preparation Fee	\$750.00	1	\$750.00
Reissuing Checks/1099's	\$5.00	1	\$6.75
Postage	\$0.58	1	\$0.78
Responding to IRS, State, Agency Inquiries	\$75.00	1	\$75.00
Disbursement Manager	\$125.00	1	\$125.00
Total			\$2,981.11



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Case Wrap Up

Send Final Reports to Counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	1	\$125.00
Clerical-Clean Up Any Misc	\$50.00	1	\$50.00
Project Manager-Wrap-up Final Issues	\$125.00	1	\$125.00
Total			\$300.00

Postage

\$165.47

Total Case Cost:

\$5,956.73

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions:

1. **Services.** Simpluris agrees to provide Client those services set forth in the Bid (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Bid. However, Client such fees for Services are estimated based on the requirements provided by Client and actual fees charged by Simpluris may be greater or less than such estimate and Client will be responsible for the payment of all such fees.
2. **Billing and Payment.** Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Bid. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees for the Services, regardless of any court decisions, and/or actions by the parties, including disapproval or withdrawal of a settlement.
3. **Retention of Documents.** Unless directed otherwise in writing by the Client, Simpluris will destroy all undeliverable mail (except for undeliverable checks) on the date that it is processed and retained in Simpluris' system. Simpluris will maintain records to establish that the subject mail is undeliverable. Simpluris will retain undeliverable checks until the Qualified Settlement Fund is closed. Simpluris will also retain all other class member and putative class member correspondence (including without limitation, claims forms and opt out forms) for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Lastly, Simpluris will retain bank & tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
4. **Limitation of Liability; Disclaimer of Warranties.** Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. Simpluris' only obligation will be to correct any non-conformance with the foregoing warranty. In no event will Simpluris be liable for any lost profits/opportunities, business interruption or delay or, special, consequential, or incidental damages incurred by Client relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise. Under no circumstances will Simpluris be liable to Client for any claims, losses, costs, penalties, fines, judgment or damages, including court costs and reasonable attorney's fees (collectively, "Losses"), whether direct or indirect, arising out of, related to, or in connection with Services in an amount in excess of the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.
5. **Force Majeure.** To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented by reason of any act of God or because of any other matter beyond Simpluris' reasonable control, then such performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
6. **Rights in Data.** Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.
7. **Electronic Communications.** During the provision of the Services the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.
8. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.
9. **Waiver.** Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.
10. **Termination.** Client may terminate the Services at anytime upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris in respect of Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 90 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice, if the Client is not current in payment of fees.
11. **Jurisdiction.** The parties hereto irrevocably and unconditionally submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in such Court.
12. **Survival.** Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 - Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 - Indemnification.
13. **Entire Agreement.** These Terms and Conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.
14. **Confidentiality.** Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.
15. **Indemnification.** Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents harmless against any Losses incurred by Simpluris, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.
16. **Severability.** If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
17. **Database Administration.** Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

Simpluris Security Summary – White Paper

Simpluris is committed to the security and overall protection of not only our data and information but our client's data and information, as well. As a demonstration of our commitment, we maintain SOC 2 Certification which requires strict adherence to policies and procedures surrounding information security, including processing and storage of confidential customer data. Simpluris supports a comprehensive, written Information Security Program that complies with all applicable laws and regulations (e.g. HIPAA, Gramm-Leach-Bliley Act, MA 201 CMR 17.00) and is designed to (a) ensure the security, privacy and confidentiality of Client and Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Client or Class Member Information, and (c) protect against unauthorized access to, use, deletion, or modification of Class Member Information. Simpluris has designated specific employees to be responsible for the administration of its Information Security Program. Also, Simpluris regularly and routinely monitors, tests, and updates our Information Security Program.

Simpluris uses Client and Class Member Information only for the purposes for which its' clients provide it, as described in any Agreements or Court Orders governing the provision of Simpluris' services in any particular case. Simpluris maintains a process for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of Simpluris' operations. At Simpluris, we continuously evaluate the effectiveness of the safeguards for controlling these risks to data and bank accounts. Simpluris restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs. Simpluris performs background checks of all its employees that will have access to Sensitive Personal Information, including a review of their references, employment eligibility, education, and criminal history to ensure they do not pose a risk to the security of Client or Class Member Information.

Simpluris adheres to the following industry best practices to safeguard its systems which process, store or transmit Client and Class Member Information:

- Identity and Access Management;
- Complex passwords are routinely and regularly changed;
- Role-based access control systems to limit individual employee access to network applications and systems based on their particular job role and function;
- Data Loss Prevention and Intrusion Prevention System software at multiple layers to prevent from internal and external threats of data leaks, malicious activity, and policy violations
- Encryption of Class Member Information if transmitted over public or wireless networks (e.g., via email, FTP, the Internet, etc.);
- Implementation of a Secure File Transfer system (using SSL encryption) for transmitting documents back and forth to clients;
- Encryption of servers, portable media, laptops, desktops, smartphones, mobile devices, and new technologies that store Class Member Information;
- Complex password authentication for remote access to Company's networks;
- Upon hire and annually after that, training of all employees with access to Class Member Information, (including any agents, and subcontractors with access to Class Member Information) about their obligations to implement the Information Security Program;
- Strict disciplinary measures for employees who violate the Information Security Program;
- Preventing terminated employees from accessing Class Member Information;
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Prompt application of vendor-recommended security patches and updates to systems and other applications to avoid any adverse impact on Class Member Information;
- Separation of Duties;
- Infrastructure and Physical Security;
- Business Continuity Planning;
- Disaster Recovery Planning

EXHIBIT E

Client	Matter	Entered	Description	Price	Quantity	Amount
Leon, Hector	Costs	10/28/2020	Administration/Copy Fee - Class Action - Phone, Fax, Scan, Copying, Non-Certified/Courier Postage, Lexis Legal Research Fees	\$500.00	1.00	\$500.00
Leon, Hector	Costs	10/28/2020	Payment for Records - Sacramento Superior Court Plaintiff and Defendant Search	\$2.00	1.00	\$2.00
Leon, Hector	Costs	11/16/2020	Postage - Certified PAGA Letters to Employers	\$4.20	3.00	\$12.60
Leon, Hector	Costs	11/16/2020	Payment to LWDA - PAGA Filing Fee	\$75.00	1.00	\$75.00
Leon, Hector	Costs	1/22/2021	Payment to Court - Complaint Fee Superior Court	\$435.00	1.00	\$435.00
Leon, Hector	Costs	1/22/2021	E-Filing Charge - Complaint (San Joaquin)	\$21.75	1.00	\$21.75
Leon, Hector	Costs	Anticipated	Service Fee to Court - Complex Fee	\$40.00	1.00	\$40.00
Leon, Hector	Costs	Anticipated	Payment to Court - Complex Fee	\$1,000.00	1.00	\$1,000.00
Leon, Hector	Costs	Anticipated	Service Fee to Court - Preliminary Approval Motion	\$40.00	1.00	\$40.00
Leon, Hector	Costs	Anticipated	Payment to Court - Preliminary Approval Motion	\$60.00	1.00	\$60.00
Leon, Hector	Costs	Anticipated	Service Fee to Court - Final Approval Motion	\$40.00	1.00	\$40.00
Leon, Hector	Costs	Anticipated	Payment to Court - Final Approval Motion	\$60.00	1.00	\$60.00
Leon, Hector	Costs	Anticipated	Service Fee to Court - Case Management Statement	\$40.00	1.00	\$40.00
Leon, Hector	Costs	Anticipated	Service Fee to Court - Compliance Declaration	\$40.00	1.00	\$40.00
Total:						\$2,366.35

EXHIBIT F

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

HECTOR LEON, individually and on behalf of all other
similarly situated employees,

Plaintiff,

vs.

GOLDEN BAY FENCE PLUS IRON WORKS, INC., a
California Corporation; PAUL CHAVEZ, an individual;
NICHOLAS CHAVEZ, an individual; and DOES 1 to 100,
inclusive,

Defendants.

Case No. STK-CV-UOE-2021-0000543

**NOTICE OF PROPOSED CLASS ACTION
SETTLEMENT, AND HEARING DATE FOR FINAL
COURT APPROVAL OF SETTLEMENT**

ATTENTION: ALL PERSONS EMPLOYED BY GOLDEN BAY FENCE PLUS IRON WORKS, INC. AS NON-EXEMPT EMPLOYEES IN CALIFORNIA FROM JANUARY 22, 2017, THROUGH [PRELIMINARY APPROVAL DATE]:

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO RECEIVE PAYMENT OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

IF YOU DO NOT WISH TO RECEIVE PAYMENT UNDER THE SETTLEMENT OR PARTICIPATE IN THE SETTLEMENT YOU MUST REQUEST TO BE EXCLUDED FROM THE SETTLEMENT CLASS ON OR BEFORE _____, 2022.

Pursuant to the Order Granting Preliminary Approval of Class Action and PAGA Settlement of the Superior Court of the State of California for San Joaquin County entered _____, 2021, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

A class action settlement has been reached between the Parties in the above-captioned lawsuit pending in the Superior Court of the State of California for the County of San Joaquin on behalf of all individuals employed by Golden Bay Fence Plus Iron Works, Inc. as non-exempt employees in California between January 22, 2017 and [Preliminary Approval Date] (the "Settlement Class" or "Class Members"); the Settlement Class does not include persons who submit valid Requests for Exclusion (as explained below), or who previously settled, released or received awards for claims covered by the Settlement.

The "Released Parties" in the Action include (i) Golden Bay Fence Plus Iron Works, Inc., Paul Chavez, and Nicholas Chavez ("Defendants"); (ii) each of Defendants' respective past, present and future parents, subsidiaries and affiliates; (iii) the past, present and future partners, shareholders, directors, officers, agents, employees, attorneys, insurers, predecessors, successors and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing

You have received this notice because records indicate you worked as a non-exempt employee in California for Defendants during the Class Period (defined below). This notice is to advise you of how you can either participate in the Settlement or be excluded from the Settlement.

I. BACKGROUND OF THE CASE

On January 22, 2021, Plaintiff Hector Leon ("Plaintiff" or "Class Representative") filed a complaint against Defendants in the San Joaquin County Superior Court on behalf of himself and other non-exempt employees who worked for Defendants in California for alleged violations of the California Labor Code. ("Complaint"). The term "Action" means this putative class and Private Attorneys General Act ("PAGA") action pending in San Joaquin County Superior Court, Case No. STK-CV-UOE-2021-0000543. The Class Period is between January 22, 2021, and [Preliminary Approval Date] (the "Class Period").

Plaintiff's Complaint alleges a failure to pay overtime wages, failure to pay minimum wages, failure to provide meal periods, failure to provide rest breaks, failure to provide accurate wage statements, failure to timely pay wages, failure to reimburse expenses, unfair competition, and a PAGA cause of action, on behalf of all non-exempt employees who worked for Defendants in California from January 22, 2017, to the present. Plaintiff's Complaint seeks recovery of penalties, interest, and attorneys' fees and costs. Defendants deny all claims, and deny that Plaintiff and the Class Members are entitled to any recovery.

The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in extensive private settlement negotiations. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions including the complete defenses to liability potentially available to Defendants, the inherent risk of trial on the merits, the risk of denial of class certification, and the delays associated with litigation, the Parties reached a class-wide Settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Settlement, Defendants continue to deny all allegations and claims.

The Parties have since entered into a Joint Stipulation of Settlement and Release between Plaintiff and Defendants, which has been preliminarily approved by the Court.

If you are part of the Settlement Class, you have the opportunity to participate in the Settlement, or to exclude yourself ("opt out") from the Settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Settlement, Defendants agree to pay on a claims made basis up to a Maximum Settlement Amount of \$300,000 for all claims, damages, attorneys' fees, costs, the enhancement award, employer payroll taxes, penalties, and claims administration expenses ("Maximum Settlement Amount"). Deducted from this Maximum Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed thirty-five percent (35%) of the Maximum Settlement Amount which equals \$105,000, attorneys' costs not to exceed \$10,000, an Enhancement Award to the Class representative not to exceed \$15,000, the fees and expenses of the Claims Administrator estimated not to exceed \$6,500, the employer payroll taxes on the wage portion of the Settlement Awards, and \$7,500 payable to the California Labor and Workforce Development Agency ("LWDA") for alleged PAGA penalties, which will result in a "Net Settlement Amount" for distribution to all Class Members. As explained further below, the amount of each Class Member's Settlement Award will depend on the number of weeks worked by participating Class Members during the Class Period and the number of Class Members who submit claims.

The Claim Form will list for each Class Member the number of weeks each Class Member worked during Class Period and his/her estimated Settlement Award.

B. Settlement Formula, and Settlement Awards

Defendants will pay Settlement Awards through a Claims Administrator, as described below, to each Class Member who submits a timely Claim Form and has not submitted a Request for Exclusion from the Settlement. All Settlement Awards will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Settlement Awards payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 1/3 alleged unpaid wages for which IRS Forms W-2 will issue and 2/3 for alleged unpaid penalties and interest for which IRS Forms 1099-MISC will issue.

Settlement Awards to Class Members will be based on the number of weeks worked by individual Class Members during the Class Period. The number of workweeks will be determined by reference to Defendants' records. The Claims Administrator or Defendants, based on Defendants' records, will calculate the number of workweeks for each Class Member during the Class Period. The number of weeks worked will be calculated by dividing by seven the total number of days worked by the Class Member for Defendants in California during the Class Period. Partial workweeks will not be counted, meaning incomplete workweeks will be rounded down; however, if a Class Member worked only one day as a Class Member, such Class Member will be credited with having worked one workweek for purposes of the Settlement. For any amount of the Net Settlement Sum not claimed by Class Members by submitting timely valid Claim Forms or because a Class Member opted out of this Settlement, the Parties agree that the minimum amount to be paid to Class Members who submit valid claims (*i.e.*, the settlement floor) will be 50 percent of the Net Settlement Amount; if the amount claimed by Class Members is less than 50 percent, the amount to be paid to Class Members who submit valid claims will be increased pro rata until 50 percent of the Net Settlement Amount is paid out. Any unclaimed residue remaining in the Net Settlement Amount will remain Defendants' sole and exclusive property.

Receipt of the Settlement Awards will not entitle any Class Member to additional compensation or benefits under any company compensation or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendants' Records

For each Class Member, the amount payable to the Class Member will be calculated by the Claims Administrator from

Defendants' records. Defendants' records will be presumed correct, unless evidence to the contrary is provided to the Claims Administrator. Defendants' records and any additional evidence will be reviewed by the Claims Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendants' records, all supporting documents evidencing additional workweeks must be submitted by the Class Member with the Claim Form. The dispute will be resolved by the Claims Administrator as described in Section E below.

D. Release of Claims

The Joint Stipulation of Settlement and Release between Plaintiff and Defendants contains a release which releases Defendants and the Released Parties from all claims under state, federal and local law that were or could have been asserted based on the facts and allegations made in the Action, and any amendments thereto, as to the Class Members, including without limitation, California Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 246, 246.5, 247, 248.5, 256, 510, 512, 558, 558.1, 1174, 1193.6, 1194, 1194.2, 1197.1, 2802, 2699, *et seq.*, California's Minimum Wage Order, California Industrial Commission Wage Orders, Cal. Code Regs., Title. 8, section 11040, *et seq.*, and Business and Professions Code sections 17200, *et seq.*, and including all claims for alleged unpaid wages, rounding time entries, overtime or double time wages, minimum wages, timely payment of wages during employment, timely payment of wages at separation, rest periods and rest period premiums, meal periods and meal period premiums, off-the-clock work, wage statements, payroll records and recordkeeping, unreimbursed business expenses, personal phone usage, personal vehicle usage, failure to provide paid sick leave, failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or matching benefits for payments received under the Settlement, unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, class actions, representative actions, aggrieved party claims, injunctive relief, declaratory relief, liquidated damages, penalties of any nature (including but not limited to civil penalties, waiting-time penalties, wage statement penalties, and PAGA penalties), interest, fees, costs, as well as all other claims and allegations alleged in the Action, from January 22, 2017 through the date the Court finally approves the Settlement (collectively "Released Claims").

E. Resolution of Workweek Disputes

If a Class Member disputes the accuracy of Defendants' records as to the number of workweeks worked, any documentation supporting such dispute must be submitted to the Claims Administrator with the Claim Form. All workweek disputes will be resolved and decided by the Claims Administrator, and the Claims Administrator's decision on all disputes will be final and binding.

F. Enhancement Award for the Class Representative

Subject to approval by the Court, Class Representative will receive an Enhancement Award up to \$15,000.00. This payment will be made for his service as a Class Representative, including active participation in prosecution of the Action, as well as willingness to accept the risk of incurring Class Counsel's costs or paying Defendants' attorneys' fees and costs for an unsuccessful outcome in the Action. The Class Representative also signed a general release of all claims, which is broader than the release applicable to all other Class Members, to be eligible for the Enhancement Award.

G. Attorneys' Fees and Costs

As consideration for the Settlement and in exchange for the release by the Settlement Class, Defendants agrees to pay Class Counsel's attorneys' fees and costs to be set by the Court, up to a maximum of thirty-five percent (35%) of the Maximum Settlement Amount which equals \$105,000, and attorneys' costs not to exceed \$10,000. Class Counsel's attorneys' fees and costs will be paid and deducted from the Maximum Settlement Amount.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Excluding Yourself from the Settlement

If you do not wish to participate in the Settlement, you may be excluded (*i.e.*, "opt out") by submitting a timely written request to the Claims Administrator stating you have received notice of the Settlement, decided not to participate in the Settlement, and desire to be excluded from the Settlement, or words to that effect ("Request for Exclusion"). Your Request for Exclusion must also state your full name, address, date of birth, and the dates you were employed by Defendants as a non-exempt employee in California. The Request for Exclusion must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

Simpluris, Inc.
3176 Pullman Street, Suite 123
Costa Mesa, CA 92626

The Request for Exclusion must be postmarked no later than _____, 2021. If you submit a Request for Exclusion which is not postmarked by _____, 2021, your Request for Exclusion will be rejected and you will be bound by the Release and all other Settlement terms. If the Request for Exclusion is sent from within the United States it must be sent through the United States Postal Service by First Class Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your Request for Exclusion.

Any person who submits a complete and timely Request for Exclusion shall, upon receipt by the Claims Administrator, no longer be a Class Member, shall be barred from participating in any portion of the Settlement, shall not be entitled to object to the Settlement, shall receive no benefits from the Settlement, shall not be deemed to have relinquished the Released Claims against the Released Parties, and, at his or her own expense, may pursue any claims he or she may have against the Released Parties. If an individual submits both an executed Claim Form and a Request for Exclusion, the Request for Exclusion will be deemed invalid, and the individual will be included in the Settlement Class and will be bound by the terms of the Settlement.

B. Objection to Settlement

If you do not exclude yourself from the Settlement, you can object to the terms of the Settlement before Final Approval. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. To object, you may file a written objection and a notice of intention to appear at the Final Approval hearing currently set for _____, 2021, _____ Department _____. You must file the written objection and notice of intention to appear at the Final Approval Hearing with the Office of the Clerk of the San Joaquin County Superior Court, at 180 E Weber Ave., Suite 200, CA Stockton, CA 95202, and send copies to the Claims Administrator, and Counsel as follows:

CLASS COUNSEL

Galen T. Shimoda, Esq.
SHIMODA LAW CORP.
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624

DEFENDANTS' COUNSEL

Cary G. Palmer, Esq.
JACKSON LEWIS P.C.
400 Capitol Mall, Suite 1600
Sacramento, CA 95814

Any written objection must state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, date of birth, and the dates of you were employed as a non-exempt employee in California by Defendants. To be valid and effective, any objections to approval of the Settlement must be filed with the Clerk of the Court and delivered to the Claims Administrator and each of the above-listed attorneys no later than 60 calendar days after the Claims Administrator mails the Notice and the Claim Form to the Class Members. **DO NOT TELEPHONE THE COURT.**

However, a Class Member may appear at the Final Approval Hearing, either in person or through their own counsel, and object to the Settlement Agreement and any of its terms without submitting a prior objection in the manner and by the deadline specified above. If you choose to file an objection to the terms of this Settlement, you may enter an appearance *in propria persona* (meaning you choose to represent yourself) or through your own attorney at your own expense. To do so, you must file an Entry of Appearance with the Clerk of the Calaveras County Superior Court, and deliver copies to the Claims Administrator and each of the attorneys listed above. Such Entry of Appearance must be filed with the Court and delivered to the above attorneys no later than 60 days after the Claims Administrator mails the Notice and the Claim Form to Class Members. You will then continue as a Settlement Class Member either *in propria persona* or with representation by your own attorney, and you will be solely responsible for the fees and costs of your own attorney. The final fairness hearing at which the Court will be asked to approve the Settlement will be at _____ /a.m./p.m. (Pacific Time) on _____, 2022, in Department _____, Superior Court of the State of California for the County of San Joaquin, _____, or such other later date as the Court may authorize.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

Upon Final Approval being granted by the Court, each and every Class Member, who does not opt out of the Settlement, will release Defendants and the Released Parties from the Released Claims as described above. In other words, if you were employed as a Class Member by Defendants in California during the Class Period, and you do not exclude yourself from the Settlement Class, you will be deemed to have entered into this release and to have released the above-described Released Claims even if you do not submit a Claim Form. In addition, you will be barred from ever suing Defendants and the Released Parties with respect to the Released Claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department ____ of the Superior Court of the State of California for the County of San Joaquin _____, on _____, 2022, at ____ /a.m./p.m. (Pacific Time), to determine whether the Settlement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs, the costs of administration, and the Enhancement Award to be paid to the Class Representative. Class Counsel's application for attorneys' fees and litigation costs will be on file with the Court no later than _____, 2022, and will be available for review after that date. Class Counsel are seeking approval of a total of not more than thirty-five percent (35%) of the Settlement for attorneys' fees which equals \$105,000, and not more than \$10,000 for attorneys' costs.

The hearing may be continued without further notice to the Settlement Class. It is not necessary for you to appear at this hearing, unless you wish to object to the Settlement.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should consult the detailed Joint Stipulation of Class Action and PAGA Settlement and Release between Plaintiff and Defendants ("Settlement Agreement") which is on file with the Clerk of the Court. The pleadings and other records in this Action, including the Settlement Agreement, may be examined at any time during regular business hours at the Office of the Clerk of the San Joaquin at 180 E Weber Ave., Suite 200, CA Stockton, CA 95202. You may also visit www._____.com, which will include links to the Settlement Agreement, Class Notice, Motions for Preliminary and Final Approval, and Motion for Attorneys' Fees as they become available.

If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel:

Galen T. Shimoda, Esq.
SHIMODA LAW CORP.
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624

(916) 525-0716 Telephone
(916) 760-3733 Facsimile
Email: attorney@shimodalaw.com

**PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR
INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS.**

BY ORDER OF THE SUPERIOR COURT

EXHIBIT G

CLAIM FORM
LEON V. GOLDEN BAY FENCE PLUS IRON WORKS, INC.
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN JOAQUIN
CASE NO. STK-CV-UOE-2021-0000543

You must complete this Claim Form to be eligible for a monetary recovery. Incomplete and/or late Claim Forms will be rejected. You must complete, sign, date and mail this Claim Form by first-class mail postmarked on or before _____, and addressed to the claims administrator at the following address in order to be eligible to receive a settlement payment. Whether you are a current or former non-exempt employee in California, your decision as to whether or not to submit this Claim Form will in no way affect your employment with Golden Bay Fence Plus Iron Works, Inc., Paul Chavez, and Nicholas Chavez ("Defendants"). Defendants will not retaliate against you in any way for making a claim in this case.

MAIL TO:
Simpluris, Inc.
3176 Pullman Street, Suite 123
Costa Mesa, CA 92626
Telephone: 1 (800) 779-2104

INSTRUCTIONS

- A. You must complete, sign, date and mail this Claim Form to be eligible for a settlement award. Your Claim Form must be filled out completely, signed, dated and postmarked on or before _____, or it will be rejected and will not entitle you to any monetary recovery.
- B. You are responsible for maintaining a copy of the fully completed Claim Form and proof of mailing.
- B. If you move, please send the Claims Administrator, Simpluris, Inc., your new address. It is your responsibility to keep a current address on file with the Claims Administrator.

(1) Please review the following identifying information, and make any necessary changes in the right-hand column:

||||| Claim #

First, Last

c/o

Address1 Address2

City, State, Zip, Country

()

Area Code

Work Telephone Number

Name/Address Changes (if any):

()

Area Code

Home Telephone Number

(2) Weeks Worked During Class Period: According to Defendants' records, you worked _____ workweeks in California as a non-exempt employee between January 22, 2017, and [Preliminary Approval Date] ("Class Period"). Your individual share of the Settlement is estimated to be approximately \$ _____.

(3) If you disagree with the number of workweeks stated in Paragraph (2) above, please indicate how many workweeks you believe you worked as a non-exempt employee in California during the Class Period and explain why you believe Defendants' records are mistaken:

If you dispute the number of workweeks as stated in Paragraph (2) above, Defendants' records will control unless you are able to provide documentation with this Claim Form that establishes otherwise, and that Defendants' records are mistaken. If there is a dispute about whether Defendants' information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Claims Administrator as described in the Notice of Proposed Class Action Settlement, and Hearing Date for Final Court Approval of Settlement that accompanies this Claim Form. Such a determination by the Claims Administrator will be final and binding with no opportunity for further appeal.

Please Note: All Settlement Awards are subject to taxation as wages and will be reported to the IRS and state tax authorities. You will receive IRS Forms W-2 and 1099-MISC covering your Settlement Award. Although Defendants have your Social Security Number, your check will be issued by the Claims Administrator. Accordingly, you must complete the below form.

Taxpayer Identification Number Certification – Substitute IRS Form W-9

Enter your Social Security Number (SSN): _____ - _____ - _____

Print name as shown on your income tax return if different from [name]

Name: _____
(First) (Middle) (Last)

Under penalty of perjury, I certify that;

1. The taxpayer identification number shown on this form is my correct taxpayer identification number, **and**
2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, **and**
3. I am a U.S. person (including a U.S. resident alien). Please Circle One: Yes No

Note: If you have been notified by the IRS that you are subject to backup withholding, you must cross out item 2 above.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the above information is true and correct.

Signature: _____ Date: ____/____/____

The IRS does not require your consent to any provision of this document other than this Form W-9 certification to avoid backup withholding.

My signature below constitutes a full and complete release by me of: Golden Bay Fence Plus Iron Works, Inc., Paul Chavez, and Nicholas Chavez ("Defendants"); each of Defendants' respective past, present and future parents, subsidiaries and affiliates; the past, present and future partners, shareholders, directors, officers, agents, employees, attorneys, insurers, predecessors, successors and assigns of any of the foregoing; and any individual or entity which could be jointly liable with any of the foregoing (collectively "Released Parties"). For all claims under state, federal and local law that were or could have been asserted based on the facts and allegations made in the Action, and any amendments thereto, as to the Class Members, including without limitation, California Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 246, 246.5, 247, 248.5, 256, 510, 512, 558, 558.1, 1174, 1193.6, 1194, 1194.2, 1197.1, 2802, 2699, *et seq.*, California's Minimum Wage Order, California Industrial Commission Wage Orders, Cal. Code Regs., Title 8, section 11040, *et seq.*, and Business and Professions Code sections 17200, *et seq.*, and including all claims for alleged unpaid wages, rounding time entries, overtime or double time wages, minimum wages, timely payment of wages during employment, timely payment of wages at separation, rest periods and rest period premiums, meal periods and meal period premiums, off-the-clock work, wage statements, payroll records and recordkeeping, unreimbursed business expenses, personal phone usage, personal vehicle usage, failure to provide paid sick leave, failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or matching benefits for payments received under the Settlement, unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, class actions, representative actions, aggrieved party claims, injunctive relief, declaratory relief, liquidated damages, penalties of any nature (including but not limited to civil penalties, waiting-time penalties, wage statement penalties, and PAGA penalties), interest, fees, costs, as well as all other claims and allegations alleged in the Action, from January 22, 2017 through the date the Court finally approves the Settlement (collectively "Released Claims"). I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

(Sign your name here)

(Date)

EXHIBIT H

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Jessica L. Hart (Cal. State Bar No. 331441)
Shimoda Law Corp.
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff HECTOR LEON, individually and
6 on behalf of all other similarly situated employees

7
8 **SUPERIOR COURT OF CALIFORNIA**

9 **FOR THE COUNTY OF SAN JOAQUIN**

10
11 HECTOR LEON, individually and on
12 behalf of all other similarly situated
employees,

13 Plaintiff,

14 vs

15
16 GOLDEN BAY FENCE PLUS IRON
WORKS, INC., a California Corporation;
17 PAUL CHAVEZ, an individual; NICK
CHAVEZ, an individual; and DOES 1 to 100,
18 inclusive,
19 Defendants.

Case No. STK-CV-UOE-2021-0000543

CLASS ACTION

**DECLARATION OF GALEN T. SHIMODA IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date:

Time: 9:00 a.m.

Dept.: 11B

Judge: Hon. Roger T. Waters

Filed: January 22, 2021

Trial Date: None Set

1 I, Galen T. Shimoda, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Hector Leon ("Plaintiff") herein. I am making this
4 declaration on behalf of the named Plaintiff, the putative class members, and in support of Plaintiff's
5 Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion"). A true and
6 correct copy of the Joint Stipulation of Class Action and PAGA Settlement and Release Between
7 Plaintiff and Defendants ("Agreement") in this matter is filed with this Motion as Exhibit A.

8 2. This case was brought as a wage and hour class action based on Plaintiff's contention
9 that Defendants Golden Bay Fence Plus Iron Works, Inc., Paul Chavez, and Nicholas Chavez
10 ("Defendants") failed to pay overtime, failure to pay minimum wages, failed to provide accurate wage
11 statements, failed to provide meal and rest periods or pay premiums in lieu thereof, wage statement
12 violations, failed to reimburse expenses, failed to timely pay wages and engaged in unfair competition.
13 Plaintiff is also alleging liability for civil penalties under the Private Attorneys General Act
14 ("PAGA"). These claims are based allegations that Defendants violated California law by 1) failing to
15 pay minimum wages to Plaintiff and similarly situated employees for all hours worked due their
16 business practice of rounding employee hours; 2) failing to provide compliant meal and rest periods,
17 or pay premiums in lieu thereof; and 3) failing to pay Plaintiff and similarly situated employees all
18 reimbursements owed for use of their personal cell phones and vehicles for work-related purposes.
19 The PAGA, waiting time penalty, wage statement violation, and unfair competition claims also derive
20 from these violations.

21 3. Plaintiff is the only named representative in this matter. From our initial investigations
22 of Plaintiff's claims and documents, we believed these claims had merit and could be maintained as a
23 class action. We began investigating the claims in October 2020 and began negotiation talks with
24 Defendants' counsel shortly thereafter. We continued these discussions and began engaging in
25 informal discovery at this time and continued to do so through the time we ultimately resolved the
26 claims. We were able to do this prior to filing the Complaint and only filed after we had come to
27 terms on a resolution of the claims we raised in our November 2020 notice letter to the Labor and
28 Workforce Development Agency. We filed the action on or about January 22, 2021. Plaintiff

1 exhausted administrative remedies through the Labor and Workforce Development Agency
2 (“LWDA”). Plaintiff filed a notice with the LWDA on November 12, 2020, setting forth the facts and
3 theories of liability. A true and correct copy of the notice filed with the LWDA is being filed with this
4 Motion as Exhibit C. A copy of the notice was also sent to Defendants via certified mail and the
5 \$75.00 filing fee was remitted to the LWDA at that time. There was no response by the LWDA
6 regarding its intent to investigate the claims alleged in Plaintiff’s notice for more than 65 days. As
7 such, Plaintiff became authorized to commence a civil action under the PAGA. A true and correct
8 copy of Plaintiff’s operative Complaint is filed with this Motion as Exhibit B. A copy of the
9 complaint was uploaded to the LWDA on January 26, 2021, after we received an endorsed copy back
10 from Court.

11 4. Currently, there is no date set for a motion to certify the class and there is no trial date.

12 5. Defendants are represented in this matter by Cary Palmer of Jackson Lewis. From the
13 beginning, Defendants have contested the merits of this case, the suitability of the case for class action
14 or representative treatment, the manageability of the case at trial, and Plaintiff’s ability to prove a
15 violation in each pay period for each employee among other defenses and contentions they made
16 challenging the propriety of this action. Defendants further contended that, even assuming there was a
17 finding supporting the imposition of PAGA penalties, the Court would likely exercise its discretion to
18 substantially reduce any such penalties owed based on evidence of good faith attempts to comply with
19 Labor Code obligations by Defendants. Notwithstanding its agreement to settle this matter,
20 Defendants believe the practices Plaintiff is contending are unlawful either do not exist or, to the
21 extent they do exist, fully comply with all state and federal employment laws with respect to Plaintiff
22 and Class Members. Also, Defendants have contended that this matter is not appropriate for class
23 certification outside of this proposed class settlement.

24 6. Based on the expected testimony from Plaintiff and Class Members, a review of
25 Defendants’ policies and procedures and other documents relating to the alleged claims, information on
26 the number of Class Members, Class Members’ dates of employment, and relevant payroll data for
27 Class Members, the scope of the potential damages to Plaintiff and Class Members in light of the
28 claims alleged, the uncertainty in the law with regard to certification, and the negotiations that have

1 taken place, I am convinced that the proposed settlement is in the best interest of the class. The length
2 and risks of trial and other normal perils of litigation that impact the value of the claims were also
3 considered and weighed in reaching the Agreement. In addition, I carefully considered the prospect of
4 potential class certification issues as well as the uncertainty of class certification, the difficulties of
5 complex litigation, and the lengthy process of establishing specific damages and various possible
6 delays and appeals in agreeing to the proposed settlement. I further considered the fact that penalties
7 under the PAGA could be substantially cut at the discretion of the Court even if Plaintiff was successful
8 on proving those claims and there was risk that a Court could find no willfulness in the failure to pay
9 wages at separation, which would eliminate the value of the waiting time penalty entirely. Overall, I
10 believe it is more beneficial to secure a guaranteed benefit to the class now rather than to proceed with
11 litigation and potentially obtain zero funds to the class due to legal or factual issues in the case.

12 7. My office, including my partner, Justin Rodriguez, Esq., my associate, Jessica L. Hart,
13 my paralegals, and myself, along with Plaintiff's assistance, thoroughly investigated the merits of the
14 claims and potential damages for such claims. The parties engaged in informal discovery and exchange
15 of documents, including reviewing employee data, such as timecards, paystubs, payroll data and
16 relevant policies for the entirety of the statute of limitations applicable to the alleged claims. The
17 discovery covered all aspects of the asserted claims, including certification issues, merits issues,
18 damages, the scope and configuration of Class Members, the content and implementation of the wage
19 and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas.
20 From this production we were able to determine information critical to a reliable damages analysis such
21 as the average hourly rate, average daily hours worked, average number of workweeks and pay periods
22 that had potential violations based on the asserted claims, the frequency with which violations occurred
23 in a given week and/or pay period, and the number for former employees. This information allowed
24 my office to assess both liability and damages and create an accurate damages model. Plaintiff assisted
25 in all aspects of this litigation including providing factual information relating to Plaintiff's and
26 similarly situated employees' employment conditions, providing a substantial number of documents,
27 and answering questions regarding Defendants' factual contentions in this matter. This was important
28

1 because it directly related to our ability to maintain this case as a class action and our ability to obtain a
2 favorable settlement for the class.

3 8. Throughout this litigation our office had numerous communications with Defendants'
4 counsel discussing our respective positions. It was only after approximately fourteen (14) months of
5 extensive, arm's length negotiations that the parties were able to reach a settlement. The negotiations
6 were at all times contentious and adversarial, though still professional in nature.

7 9. The parties reviewed and analyzed substantial amounts of data regarding the class
8 claims. Based on our analysis and review of all relevant documents and Class Member information, I
9 have determined that the maximum damages for the asserted class claims is approximately
10 \$2,426,394.25 which includes civil penalties under the PAGA. The likely exposure for PAGA
11 penalties is approximately \$663,408.75, based on the counts alleged to the LWDA and the class data.
12 Based on our research, we did not find any prior labor commissioner or court decisions that stated
13 Defendants' practices and/or policies were improper. As such, a "subsequent violation" may not be
14 found for penalty calculation purposes and the exposure analysis here is based on an "initial violation"
15 valuation being adopted by any fact finder if this matter went to trial.

16 10. I believe the PAGA penalties in this case may be reduced however due to the fact that
17 the penalties would be in addition to amounts owed for substantive violations and much of the
18 penalties are based on violations due to technical non-compliance with the Labor Code. Furthermore,
19 Defendants produced a substantial number of documents that a Court may find demonstrates a good
20 faith attempt at compliance that merits the reduction of civil penalties. Courts regularly cut civil
21 penalties on PAGA claims where statutory penalties for the same violations are assessed as well. The
22 statutorily authorized discretion that Courts have used to reduce penalties ranges substantially. *See*
23 *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction);
24 *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction).
25 Thus, civil penalties may be cut to approximately \$119,413.58 (82% reduction) or lower given the
26 derivative recovery. Taking this into account, the likely recovery if Plaintiff was successful at trial on
27 proving all the substantive class damages plus civil penalties after a reduction of the PAGA penalties
28 would be approximately \$1,882,399.08. Taking this into account, Plaintiff's \$300,000.00 gross

1 recovery under the Agreement represents approximately 16% of the maximum likely value in this
2 matter. After deducting from the Gross Settlement Amount the proposed allocations for attorneys'
3 fees and costs, any Enhancement Payment to the Class Representative, Claims Administrator Costs,
4 and the 75% portion of the PAGA Payment to the LWDA, the net recovery under the Agreement
5 represents approximately 8% of the maximum likely value in this matter. The average net award is
6 approximately \$866.70. I believe the Agreement represents a reasonable compromise of claims based
7 on the legal and factual disputes in this case. The ability to secure a guaranteed settlement now and
8 ensure Class Members receive some compensation, rather than proceed to further litigation and
9 potentially recover nothing, was a motivating factor in reaching this Agreement.

10 11. I am a shareholder at Shimoda Law Corp. In agreeing to represent Plaintiff and take on
11 the case for all Class Members, I agreed to take this case on a contingency basis, meaning that I would
12 take a percentage of any settlement or judgment should we recover a monetary amount. I took a risk
13 that we would not recover any money in this matter if we were unsuccessful at trial. I also took on the
14 risk that the case may not be certified as a class action and/or be subject to an unfavorable summary
15 judgment ruling. However, I believe it is important to make sure employees are able to find affordable
16 representation in order to ensure that employers are complying with all their legal obligations towards
17 employees and paying employees all their hard-earned wages.

18 12. My law firm is a boutique law practice that focuses primarily in employment litigation,
19 emphasizing wage and hour litigation. I graduated from the University of Utah in 2000 with a B.S. in
20 Business Management and a B.A. in Asian Studies, with a minor in Japanese language. I then
21 attended and graduated from the University of the Pacific, McGeorge School of Law and received my
22 J.D. degree in 2003. I graduated from McGeorge in the top 5% of my class and was a member of the
23 Order of the Coif and Traynor Honor Society. Since graduating from McGeorge, I have authored a
24 number of employment law articles for journals and our firm regularly publishes articles on our firm's
25 website.

26 13. I have been a regular panel speaker for the CEB (Continuing Education of the Bar)
27 Employment Review seminars from 2014 to the present. My speaking engagements include the
28 following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual

1 Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the
2 Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in
3 Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6)
4 CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law
5 Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class
6 Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21,
7 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the
8 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour
9 Panel and AB 1825 Training: Updates on California’s New Wage Laws and Manager Compliance
10 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
11 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
12 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
13 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
14 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association
15 - PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20,
16 2017); 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better
17 Know a Venue Roundup (May 17, 2019). I have been AV rated by Martindale Hubbell since 2013,
18 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized
19 as a Super Lawyer from 2014 to present.

20 14. I have practiced law in California since being admitted to the State Bar in 2003,
21 litigating wage and hour class actions and individual wage and hour litigation among other cases. I
22 began practicing class action law on the defense side at the firm of Orrick, Herrington & Sutcliffe
23 LLP. I then switched to plaintiff class action work in 2005. My class action experience is in wage and
24 hour law. I have litigated several class action cases in California State and Federal Courts, including
25 up to certification, settlement, preliminary and final approval, and disbursement of monies, and have
26 been found to be satisfy the adequacy requirements for class counsel. Some of the class action and/or
27 PAGA cases I am litigating and/or have litigated as lead or co-counsel include the following:

- 28 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);

- 1 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 2 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 3 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 4 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 5 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 6 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 7 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 8 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
- 9 Sup. Ct.);
- 10 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 11 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
- 12 Ct.);
- 13 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
- 14 Ct.);
- 15 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880
- 16 (Sac. Sup. Ct.);
- 17 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 18 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
- 19 Ct.);
- 20 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 21 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
- 22 00209613 (Sac. Sup. Ct.);
- 23 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 24 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 25 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- 26 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242
- 27 (San Joaquin Sup. Ct.);
- 28 • *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);

- 1 • *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac.
2 Sup. Ct.);
- 3 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 4 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 5 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac.
6 Sup. Ct.);
- 7 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 8 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 9 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 10 • *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- 11 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- 12 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 13 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 14 • *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- 15 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 16 • *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- 17 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 18 • *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- 19 • *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac.
20 Sup. Ct.);
- 21 • *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- 22 • *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- 23 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 24 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 25 • *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- 26 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-
27 00082201 (Sac Sup. Ct.);
- 28 • *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac.

Sup. Ct.);

- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

15. The preceding list does not include those cases where, for various reasons, the case was filed as a class action and/or PAGA action, but did not maintain that status through the end of the case.

16. My partner, Justin P. Rodriguez, Esq., also worked with me on this matter and Mr. Rodriguez was critical in assisting with all aspects of the litigation of this case. Mr. Rodriguez attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the Departmental Citation for Academic Achievement in the Philosophy program. He was one of only two recipients of this award out of the entire Philosophy Department. After U.C. Davis, Mr. Rodriguez attended the University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris Doctorate. He graduated in the top 20% of his class and was a member of the Traynor Honor Society at McGeorge. Other academic achievements of his include receiving a Witkin Award (top grade) in his legal research and writing course, a Witkin Award in complex civil litigation, being a member of the Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business & Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar Association Diversity Fellow in 2009. Mr. Rodriguez was also a member of the Employment and Labor Law Society and an officer for the Latino Law Students Association from 2009 to 2010.

17. Mr. Rodriguez was an associate of the Shimoda Law Corp from 2011 to 2016 and became a partner in 2017. Since 2017, he has received an AV Preeminent rating from Martindale-Hubbell for his legal ability and ethical standards. From 2018 to present, he has been recognized as a Super Lawyer (Rising Star). In September 2018, he was a panel speaker for the Sacramento County Bar Association Labor and Employment Law Section's presentation of "*Epic Systems*, PAGA, and the Future of Employment Arbitration in California." In July 2020, he was a panel speaker for the Association of Defense Counsel of Northern California & Nevada presentation of "Class Actions and PAGA Claims." His practice focuses on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act ("FLSA") claims. He is actively involved in most of the complex litigation handled by our firm. Class and/or PAGA actions he has litigated or is currently litigating, including the instant case, includes, but is not limited to, the following:

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Adams-Anguy v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080 (San Joaquin Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Barkhausen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- *Bershell v. Dignity Health Methodist Hospital Sacramento, et al.*, Case No. 34-2017-0222269 (Sac. Sup. Ct.);
- *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-00271174 (Sac. Sup. Ct.);

- 1 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
- 2 Ct.);
- 3 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
- 4 Ct.);
- 5 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880
- 6 (Sac. Sup. Ct.);
- 7 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 8 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
- 9 Ct.);
- 10 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 11 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
- 12 00209613 (Sac. Sup. Ct.);
- 13 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 14 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-
- 15 00222101 (Sac. Sup. Ct.);
- 16 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 17 • *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup.
- 18 Ct.);
- 19 • *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- 20 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 21 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup.
- 22 Ct.);
- 23 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac.
- 24 Sup. Ct.);
- 25 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 26 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 27 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- 28 • *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);

- 1 • *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- 2 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 3 • *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- 4 • *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- 5 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- 6 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 7 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 8 • *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- 9 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 10 • *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- 11 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 12 • *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-
13 EFB (E.D. Cal.);
- 14 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 15 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 16 • *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 17 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-
18 00082201 (Sac Sup. Ct.);
- 19 • *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- 20 • *Salmon v. Ovation Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.);
- 21 • *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- 22 • *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- 23 • *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- 24 • *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- 25 • *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. 34-2017-00211553 (Sac.
26 Sup. Ct.);
- 27 • *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- 28 • *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

1 18. The preceding list of cases does not include those where, for a variety of reasons, the
2 case was initially filed as a class and/or PAGA action, but did not maintain that status through the end
3 of the case.

4 19. My associate, Jessica L. Hart, Esq., also worked with me on this matter with me and
5 was critical in assisting with all aspects of the litigation of this case. Ms. Hart graduated from
6 University of California Davis School of Law. Prior to joining Shimoda Law Corp., Ms. Hart worked
7 alongside a number of attorneys in the Sacramento area focusing almost exclusively on plaintiff's side
8 litigation and employment law. Since joining my firm, Ms. Hart has worked on a variety of
9 individual, class action, and Private Attorneys General Act cases involving wage and hour claims. As
10 an associate, some of the class action and/or PAGA cases Ms. Hart is litigating and/or has litigated as
11 co-counsel include the following:

- 12 • *Afoa v. Milestone Retirement Communities, LLC., et al.*, Case No. 34-2020-00282555 (Sac.
13 Sup. Ct.);
- 14 • *Cota v. Milestone Management (CA) – Meadows, LLC.*, Case No. 34-2020-00280648 (Sac.
15 Sup. Ct.);
- 16 • *Coy v. Southern Home Care Services, Inc., et al.*, Case. No. 2:21-CV-00067-JAM-CKD
17 (E.D. Cal.);
- 18 • *Dreyer v. Automation Anywhere, Inc.* Case. No 20CV372730 (Santa Clara Sup. Ct.);
- 19 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242
20 (San Joaquin Sup. Ct.);
- 21 • *Fang v. Interpress Technologies, Inc.* Case. No. 34-2021-00292937 (Sac. Sup. Ct.);
- 22 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 23 • *Garcia v. Aquality Water Management, Inc.* Case No. 34-2021-00292794 (Sac. Sup. Ct.);
- 24 • *Hawkins v. Twitch Interactive, Inc.*, Case No. 34-2020-00281761 (Sac. Sup. Ct.);
- 25 • *Hudson v. Stockton Nursing and Rehab Center, LLC.*, Case No. STK-CV-UOE-2020-
26 0008507 (San Joaquin Sup. Ct.);
- 27 • *Hussaini v. Integrated Resources, Inc, et al.*, Case. No. 34-2021-00297152 (Sac. Sup. Ct.);
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- 1 • *Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation, et al.*, Case No. 34-2020-
2 00290072 (Sac. Sup. Ct.);
- 3 • *Leon v Golden Bay Fence Plus Iron Works, Inc., et al.*, Case No. STK-CV-UOE-2021-
4 0000543 (San Joaquin Sup. Ct.);
- 5 • *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- 6 • *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954
7 (Sac. Sup. Ct.);
- 8 • *Madrigal Vargas v. Mary Ann's Baking Co., Inc.*, Case No. 2:21-CV-00320-JAM-JDP
9 (E.D. Cal.);
- 10 • *Perez v. Too Infinity Management, LLC, et al.*, Case No. 34-2020-00285276 (Sac. Sup.
11 Ct.);
- 12 • *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- 13 • *Williams v. Med-Data, Incorporated*, Case No. 34-2020-00278445 (Sac. Sup. Ct.);
- 14 • *Whiteside v. SPSG Partners, et al.*, Case No. 2:20-cv-01643-TLN-DMC (Sac. Sup. Ct.);
- 15 • *Valentin v Sacramento Laundry Company, Inc.* Sacramento Superior Court Case No. 34-
16 2019-00270987; and
- 17 • *Pek, et al v. Varris Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin
18 Sup. Ct.).

19 20. The preceding list of cases does not include those where, for a variety of reasons, the
20 case was initially filed as a class and/or PAGA action, but did not maintain that status through the end
21 of the case.

22 21. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I
23 believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35
24 (1977), *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt*
25 *v. Graulty*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiff and our firm have been able to secure an
26 identifiable benefit on behalf of the class and equity counsels that the cost of the representation should
27 be born equally amongst all class members receiving these benefits. The settlement recovery provides
28 an excellent result and is the product of substantial time and effort in analyzing the facts and law

1 applicable to this case. I agreed to take this case on a contingency and as a class action with the
2 possibility that I would not receive any compensation for my time and efforts due to issues regarding
3 the merits and/or certification and have carried that risk over the course of the case. I have reviewed
4 fee arrangements and Court ordered fee awards in similar class cases and I believe that the thirty-five
5 percent (35%) fee request is within the accepted ranges. In my experience with contingency cases in
6 employment law cases, the typical percentage negotiated between parties ranges from thirty-five to
7 forty percent (35% to 40%) in individual litigation. In class action litigation, my experience in my
8 own firm and working with several other firms has been that the typical percentage negotiated between
9 parties and approved by a court ranges from thirty to forty percent (30% to 40%) based on the same
10 factors. I have also reviewed several recent Federal District Court Cases where the Court has
11 approved common fund based fee requests. These cases include *In re Activision Sec. Litigation*, 723
12 F.Supp. 1373, 1379 (N.D. Cal. 1989), *Watson v. Raytheon Company*, USDC Southern District, Case
13 No. 3:10-cv-0063, *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-
14 02745, *Green, et al. v. Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-
15 00069, *Benitez et al. v. Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122, *Chavez et al. v.*
16 *Petrissans et al.*, USDC Eastern District, Case No. 1:08-cv-00122, and *Willis et al. v. Cal-Western*
17 *Transport*, USDC Eastern District, Case No. 1:00-cv-05695, which are cited in Plaintiff's
18 Memorandum of Points and Authorities. I believe my request of \$105,000 (approximately 35%) for
19 attorneys' fees is justified given the results obtained on behalf of the class. Moreover, at this time, my
20 firm has advanced all costs for Plaintiff and class members and has not received any compensation
21 whatsoever for our time expended in this case. The expected costs through final approval are not
22 expected to exceed \$10,000.00. Attached as Exhibit E is a true and correct copy of the costs incurred
23 prior to the filing of this Motion and the expected costs incurred through the final approval and
24 fairness hearing. Any difference in the actual costs and the maximum amount allocated under the
25 Agreement will be added to the Net Settlement Amount.

26 22. I have used several class action administrator companies in the wage and hour class
27 actions I have resolved in the past and believe Simpluris, Inc. will provide the best service to administer
28 the proposed class settlement. Simpluris, Inc. has provided a quote for the estimated maximum cost of

1 administering the class settlement of approximately \$6,500.00. A true and correct copy of a cost
2 estimate provided by Simpluris, Inc. is filed with this Motion as Exhibit D. This is only an estimate,
3 and final pricing may vary depending on the issues, if any, that arise during the administration of the
4 settlement. However, the difference between the actual, lesser costs and \$6,500.00, if any, will be paid
5 to the participating Class Members on a pro rata basis.

6 23. A copy of the proposed Agreement and the entire Motion was submitted to the LWDA
7 for review at the same time the Motion was submitted to the Court pursuant to California Labor Code
8 section 2699(1)(2). A true and correct copy of documents demonstrating the settlement documents
9 were provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion
10 as Exhibit H.

11 24. A true and correct copy of the proposed Notice of Settlement is being filed with this
12 Motion as Exhibit F.

13 25. A true and correct copy of the proposed Claim Form is being filed with this Motion as
14 Exhibit G.

15 I declare under penalty of perjury under the laws of the State of California that the foregoing is
16 true and correct. Executed this 20th day of December 2021 in Elk Grove, California.

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Galen T. Shimoda

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
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Attorneys for Plaintiff HECTOR LEON
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

HECTOR LEON, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs

GOLDEN BAY FENCE PLUS IRON
WORKS, INC., a California Corporation;
PAUL CHAVEZ, an individual; NICK
CHAVEZ, an individual; and DOES 1 to 100,
inclusive,

Defendants.

Case No. STK-CV-UOE-2021-0000543

CLASS ACTION

**DECLARATION OF HECTOR LEON IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date:

Time: 9:00 a.m.

Dept.: 11B

Judge: Hon. Roger T. Waters

Filed: January 22, 2021

Trial Date: None Set

1 I, HECTOR LEON, declare:

2 1. I am a competent adult, I have personal knowledge of the facts set forth in this
3 declaration, and I am making this declaration on behalf of myself, as a named plaintiff, and in support
4 of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement.

5 2. I worked for Defendants Golden Bay Fence Plus Iron Works, Inc., Paul Chavez, and
6 Nicholas Chavez ("Defendants") from approximately October 2018 through May 2019 and then again
7 from September 2019 through March 2020 as a non-exempt plumber and construction worker and
8 delivery driver. I was subject to all of Defendants' policies and practices that have been alleged as
9 unlawful in the complaint and the notice sent to the Labor and Workforce Development Agency,
10 including the following: failure to pay overtime, failure to pay minimum wages, failure to provide
11 accurate wage statements, failure to provide meal and rest periods or pay premiums in lieu thereof,
12 wage statement violations, failure to reimburse expenses, request for waiting time penalties and unfair
13 competition.

14 3. I have actively participated in the litigation of this case. I have given a detailed account
15 of all the facts related to my employment and the claims asserted in the Complaint. I provided
16 extensive documentation in support of the claims brought against Defendants, including paystubs,
17 Defendants' policies, and other documents related to my work with Defendants and to the claims
18 brought in the class action. I met with and assisted my attorneys Galen T. Shimoda, Justin P.
19 Rodriguez and Jessica L. Hart in understanding the documents and providing context for Defendants'
20 payroll process as it applied to me and how I believed it applied to Defendants' other employees.

21 4. My attorneys explained to me the risks and benefits of bringing a class action and a
22 claim under the Private Attorneys General Act. I understood that I took on the risk, both professionally
23 and financially, in pursuing the case as a class and representative action rather than pursuing my claims
24 individually. I understood that pursuing the case as a class action meant that it would take substantially
25 longer than pursuing a claim with the California Labor Commissioner and that I risked getting nothing
26 in the end, but I believed it was important to make sure that Defendants followed the law for everyone.

27 5. I maintained communication with my attorneys throughout the litigation, discussing the
28 facts and policies at issue in the case with the Shimoda Law Corp. I asked questions when I needed

1 clarification about various aspects of this case to make sure there were continually steps taken to
2 advance the interests of the class. I also understood that the recovery in this case was for the benefit of
3 my fellow coworkers, not just for me. When my attorneys contacted me asking about more information
4 or documents related to the case, I made myself available and tried to give or obtain any additional
5 information I could. I participated in the negotiations and settlement discussions in this case while
6 speaking with my attorney to answer questions, provide any additional information needed to assist the
7 negotiations, and discussing the potential terms of the Agreement to evaluate its adequacy.

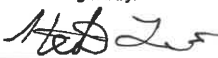
8 6. I have reviewed the final Joint Stipulation of Class Action and PAGA Settlement and
9 Release, discussed the terms with my attorney, and asked my attorney any questions I had. I believe
10 the settlement terms and allocations are fair and reasonable given the facts of the case.

11 7. As a Class Representative, I took on the risk of having to pay Defendants' costs if we
12 were unsuccessful in bringing our claims.

13 8. I understand that any Class Representative Enhancement Payment I may receive is for
14 my participation as a Class Representative and it is not contingent on my support or approval of the
15 Agreement. I do not believe I have any conflicts with any Class Members.

16 I declare under penalty of perjury under the laws of the State of California that the foregoing is
17 true and correct. Executed this 20th of December 2021 in Modesto, California.

18
19 DocuSigned by:

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21 373AC14B2CF44E3...

22 HECTOR LEON
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1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Jessica L. Hart (Cal. State Bar No. 331441)
Shimoda Law Corp.
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff HECTOR LEON, individually and
6 on behalf of all other similarly situated employees

7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN JOAQUIN**

10 HECTOR LEON, individually and on
11 behalf of all other similarly situated
12 employees,

13 Plaintiff,

14 vs

15 GOLDEN BAY FENCE PLUS IRON
16 WORKS, INC., a California Corporation;
17 PAUL CHAVEZ, an individual; NICK
18 CHAVEZ, an individual; and DOES 1 to 100,
inclusive,
Defendants.

Case No. STK-CV-UOE-2021-0000543

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date:

Time: 9:00 a.m.

Dept.: 11B

Judge: Hon. Roger T. Waters

Filed: January 22, 2021

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of a Class Action and PAGA Settlement came before this
3 Court, on _____, in Department 11B before the Honorable Judge Roger T. Waters, presiding. The
4 Court having considered the papers submitted in support of the application of the parties, HEREBY
5 ORDERS THE FOLLOWING:

6 1. The Court grants preliminary approval of the Settlement and the Settlement Class based
7 upon the terms set forth in the Joint Stipulation of Settlement and Release Between Plaintiff and
8 Defendants ("Stipulation of Settlement") filed herewith. All terms used herein shall have the same
9 meaning as defined in the Stipulation of Settlement.

10 2. The settlement set forth in the Joint Stipulation of Settlement and Release Between
11 Plaintiff and Defendants appears to be fair, adequate and reasonable to the Class. The Settlement falls
12 within the range of reasonableness and appears to be presumptively valid, subject only to any objections
13 that may be raised at the final fairness hearing and final approval by this Court.

14 3. A final fairness hearing on the question of whether the proposed Settlement, attorneys'
15 fees to Class Counsel, costs of administration and the Class Representatives' Enhancement Award
16 should be finally approved as fair, reasonable, and adequate as to the members of the Class is scheduled
17 in Department 11B on the date and time set forth in the implementation schedule in Paragraph 10 below.

18 4. This Court approves, as to form and content, the Claim Form (Exhibit G), and the Notice
19 of Pendency of Class Action, Proposed Settlement and Hearing Date for Final Court Approval
20 ("Notice") (Exhibit F). The Court approves the procedure for Class Members to participate in, to opt
21 out of, and to object to, the Settlement as set forth in the Joint Stipulation of Settlement and Release
22 Between Plaintiff and Defendants and Notice.

23 5. The Court directs the mailing of the Notice of Pendency of Class Action and Proposed
24 Settlement, and the Claim Form by first class mail to the Class Members in accordance with the
25 Implementation Schedule set forth below. The Court finds the dates selected for the mailing and
26 distribution of the Notice and the Claim Form, as set forth in the Implementation Schedule, meet the
27 requirements of due process and provide the best notice practicable under the circumstances and shall
28 constitute due and sufficient notice to all persons entitled thereto.

6. It is ordered that the Settlement Class is preliminarily certified for settlement purposes only.

7. The Court confirms Plaintiff Hector Leon as Class Representative, and Galen T. Shimoda, Justin P. Rodriguez and Jessica L. Hart of Shimoda Law Corp. as Class Counsel.

8. The Court confirms the appointment of Simpluris, Inc. as the Claims Administrator.

9. To facilitate administration of the Settlement pending final approval, the Court hereby enjoins Plaintiff and all Class Members from filing or prosecuting any claims, suits or administrative proceedings (including filing claims with the Division of Labor Standards Enforcement of the California Department of Industrial Relations) regarding claims released by the Settlement, unless and until such Class Members have filed valid Requests for Exclusion with the Claims Administrator and the time for filing claims with the Claims Administrator has elapsed.

10. The Court orders the following Implementation Schedule for further proceedings:

a.	Deadline for Defendant to Submit Class Member Information to Claims Administrator	[30 calendar days after Order granting Preliminary Approval]
b.	Deadline for Claims Administrator to Mail Notice and Claim Form to Class Members	[60 calendar days after Order granting Preliminary Approval]
c.	Deadline for Class Members to Postmark Claim Forms	[60 calendar days after mailing of the Notice and Claim Form]
d.	Deadline for Class Members to Postmark Requests for Exclusion	[60 calendar days after mailing of the Notice and Claim Form]
e.	Deadline for Receipt by Court, Claims Administrator, and Counsel of any Objections to Settlement	[60 calendar days after mailing of the Notice and Claim Form]
f.	Deadline for Class Counsel to file Motion for Final Approval of Settlement, including Request for Attorneys' Fees, Costs, and Enhancement Award	[16 Court days before Final Approval Hearing]

g.	Deadline for Claims Administrator to file Declaration of Due Diligence and Proof of Mailing	[16 Court days before Final Approval Hearing]
h.	Deadline for Defendant to provide written Notice of Rescission of Settlement to Class Counsel (if applicable)	[10 calendar days before Final Approval Hearing, provided the number and percentage of opt outs previously provided to Defendant]
i.	Final Fairness Hearing and Final Approval	Date: July 19, 2022 Time: 9:00 a.m. Department: 11B
j.	Deadline for Defendant to fund settlement	[21 calendar days after Effective Date]
k.	Deadline for Claims Administrator to mail the Settlement Awards, the Enhancement Award, and the Attorneys' Fees and Costs (if Settlement is Effective)	[35 calendar days after Effective Date]
l.	Deadline for Class Members to cash settlement checks (if Settlement is Effective)	[120 calendar days after Claims Administrator mails the Settlement Awards and the Enhancement Awards]
m.	Deadline for Claims Administrator to distribute uncashed check amount to <i>cy pres</i> beneficiaries (if Settlement is Effective)	[Within 14 calendar days after the deadline for class members to cash Settlement checks]
n.	Claims Administrator to File Proof of Payment of Settlement Awards, Enhancement Award, Attorneys' Fees and Costs, <i>cy pres</i> payments, and payment to the LWDA (if Settlement is Effective)	[Within 21 calendar days after the deadline for Claims Administrator to pay and unclaimed residue from uncashed checks to <i>cy pres</i> beneficiaries]

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Jessica L. Hart (Cal. State Bar No. 331441)
Shimoda Law Corp.
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff HECTOR LEON, individually and
6 on behalf of all other similarly situated employees

7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN JOAQUIN**
10

11 HECTOR LEON, individually and on
12 behalf of all other similarly situated
employees,

13 Plaintiff,

14 vs

15
16 GOLDEN BAY FENCE PLUS IRON
WORKS, INC., a California Corporation;
17 PAUL CHAVEZ, an individual; NICK
CHAVEZ, an individual; and DOES 1 to 100,
18 inclusive,
19 Defendants.

Case No. STK-CV-UOE-2021-0000543

CLASS ACTION

PROOF OF SERVICE

Date:

Time: 9:00 a.m.

Dept.: 11B

Judge: Hon. Roger T. Waters

Filed: January 22, 2021

Trial Date: None Set

1 *Leon v Golden Bay Fence Plus Iron Works, Inc., et al.*
2 *San Joaquin Superior Court Case No. STK-CV-UOE-2021-0000543*

3 **PROOF OF SERVICE — CCP §§ 1010.6, 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21, Rule 2.150, and Rule 2.251**

5 I, Caitlyn A. Lopez, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party
7 to the within above-entitled action.

8 On December 21, 2021, I served the following documents on the party below:

- 9 • PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY
10 APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT
- 11 • MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PLAINTIFF'S
12 MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA
13 SETTLEMENT
- 14 • EXHIBIT LIST AND EXHIBITS IN SUPPORT OF PLAINTIFF'S MOTION FOR
15 PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT
- 16 • DECLARATION OF GALEN T. SHIMODA IN SUPPORT OF PLAINTIFF'S
17 MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA
18 SETTLEMENT
- 19 • DECLARATION OF HECTOR LEON IN SUPPORT OF PLAINTIFF'S MOTION FOR
20 PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT
- 21 • [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS
22 ACTION AND PAGA SETTLEMENT

23 24 25 26 27 28 Cary Palmer (SBN 186601) Evan D. Beecher (SBN 280364) Jackson Lewis P.C. 400 Capitol Mall, Suite 1600 Sacramento, CA 95814 Phone: (916) 341 0404 Email: palmerc@jacksonlewis.com Evan.Beecher@jacksonlewis.com Gail.Baum@jacksonlewis.com	
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29 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
30 processing of correspondence for mailing with the United States Postal
31 Service and that each day's mail is deposited with the United States Postal
32 Service that same day in the ordinary course of business. On the date set forth
33 above, I served the aforementioned document(s) on the parties in said action
34 by placing a true copy thereof enclosed in a sealed envelope with postage
35 thereon fully prepaid, for collection and mailing on this date, following
36 ordinary business practices, at Sacramento, California, addressed as set forth
37 above.

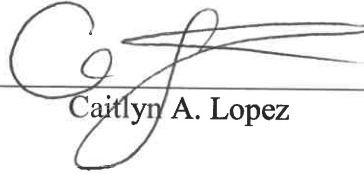
1 [] [By Personal Service] By personally delivering a true copy thereof to the
office of the addressee above.

2 [] [By Electronic Mail] I e-mailed the documents(s) to the person(s)
3 shown above. No error was reported by the e-mail service that I used.

4 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
personally delivered via the following overnight courier service:_____.

5
6 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct, and that this declaration was executed on December 21, 2021, at
7 Elk Grove, California.

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Caitlyn A. Lopez