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6 individually and on behalf of similarly situated employees

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

11 MICHAEL URIBE, individually and on behalf
12 of all other similarly situated employees,

13 Plaintiff,

14 vs.

15 ECOGUARD PEST MANAGEMENT, INC.,
16 a California Corporation; and DOES 1 to 100,
17 inclusive,

18 Defendants.

Case No. 34-2021-00300650

CLASS ACTION

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

Reservation No.: 2658835

Date: October 21, 2022

Time: 9:00 a.m.

Dept.: 25

Judge: Hon. Jill H. Talley

Filed: May 12, 2021

FAC Filed: August 31, 2021

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on October 21, 2022, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 25 of the above-entitled Court, Plaintiff Michael Uribe, individually
4 and on behalf of all other similarly situated individuals, hereby moves for entry of an Order for the
5 following:

- 6 1. Preliminarily certifying the proposed class herein for purposes of settlement only;
- 7 2. Preliminarily appointing Plaintiff Michael Uribe as class representative for purposes of
8 settlement only;
- 9 3. Preliminarily appointing Shimoda & Rodriguez Law, PC, as Class Counsel for purposes of
10 settlement only;
- 11 4. Preliminarily approving the proposed class action settlement, in the amount of \$310,000,
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 35% of the Gross Settlement Amount;
- 15 6. Preliminarily approving the application for payment to Class Counsel of reasonable costs not
16 to exceed \$7,500;
- 17 7. Preliminarily and conditionally approving the Class Representative Enhancement Payment of
18 \$15,000 to Plaintiff Michael Uribe;
- 19 8. Preliminarily approving the appointment of ILYM Group, Inc. as the Claims Administrator
20 and for payment to ILYM Group, Inc. for administering said class action settlement in an
21 amount not to exceed \$10,000;
- 22 9. Preliminarily approving the settlement of claims under the Private Attorneys General Act for
23 the total amount of \$10,000, 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 Settlement, which provides Class Members
26 information regarding the settlement, their ability to opt out of, or object to, the class action
27 settlement and which provides instruction on how to dispute an individual's settlement
28 allocation under the proposed settlement agreement;

- 1 11. Approving the proposed procedures to notify the class and determining that the proposed
2 notification procedures and process complies with Class Members' due process rights and
3 directing the Notice of Settlement to be sent by first class mail to Class Members;
4 12. Directing Defendant to report employment information, including social security numbers, to
5 the Claims Administrator to administer the settlement proceeds;
6 13. Scheduling a fairness hearing on the question of whether the proposed settlement should be
7 finally approved as fair, reasonable, and adequate;
8 14. Directing that any residue from settlement checks that are not cashed by the check cashing
9 deadline escheat to the State of California Unclaimed Property Fund to be held in the name
10 of each expired check payee, pursuant to applicable unclaimed property laws;
11 15. Preliminarily and conditionally approving and adopting the Proposed Order and its
12 implementation schedule, which is filed herewith and incorporated by reference.

13 This motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section
14 2699(l), and California Rule of Court 3.769 and 3.764, on the grounds that the proposed class action and
15 Private Attorneys General Act settlement is fair, reasonable, and adequate as to all Class Members and
16 Aggrieved Employees and should be approved by the Court. This motion will be based on the notice of
17 motion, memorandum of points and authorities, the Declaration of Brittany V. Berzin, the Declaration of
18 Michael Uribe, exhibits, the record and files of this case, and any further oral or documentary evidence
19 introduced at the hearing of this motion.

20 **Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter**
21 **by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the**
22 **department may be downloaded off the court's website. If the party does not have online access,**
23 **they may call the dedicated phone number for the department as referenced in the local telephone**
directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and
receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the
court day before the hearing, no hearing will be held.

24 Dated: September 23, 2022

Shimoda & Rodriguez Law, PC

25
26 By: _____



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Justin P. Rodriguez
Brittany V. Berzin
28 Attorneys for Plaintiff

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11 MICHAEL URIBE, individually and on behalf
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15 ECOGUARD PEST MANAGEMENT, INC.,
16 a California Corporation; and DOES 1 to 100,
inclusive,

17 Defendants.

Case No. 34-2021-00300650

CLASS ACTION

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

Reservation No.: 2658835

Date: October 21, 2022

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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 and Private Attorneys General Act (“PAGA”) settlement in the gross amount of \$310,000. *See generally* Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and Release). Plaintiff Michael Uribe (“Plaintiff”) brought this class action individually and on behalf of other similarly situated employees employed by Defendant Ecoguard Pest Management, Inc. (“Defendant”). Plaintiff worked for Defendant in California from July 8, 2020 to February 23, 2021 and contends he experienced all of the practices during his employment that are alleged to be unlawful in this litigation. *See generally* Exhibit B (Plaintiff’s Operative Complaint); Declaration of Michael Uribe (“Decl. Uribe”) ¶ 2.

Plaintiff has alleged that Defendant failed to pay overtime, failed to provide accurate wage statements, failed to timely pay final wages, failed to provide meal and rest periods or pay premiums in lieu thereof, failed to reimburse expenses, failed to provide all paid sick time, engaged in unfair competition, failed to pay contract wages, made unlawful deductions, unlawfully recorded phone calls, and violated Labor Code section 558. *See generally* Exhibit B. Plaintiff has also alleged Defendant is liable for civil penalties under the PAGA based on these violations. *See id.*; Exhibit C (Plaintiff’s Ltr. to the Labor and Workforce Development Agency (“LWDA”) Regarding PAGA Claims). These violations primarily stem from Plaintiff’s allegations that Defendant violated California law by 1) failing to pay Plaintiff, Class Members, and Aggrieved Employees for all hours worked; 2) failing to pay the correct regular rates of pay due to failing to account for the value of commissions, bonuses, and different rates of pay being paid within the same workweek; 3) failing to authorize and permit all meal and rest periods and failing to keep track of whether employees took meal periods; 4) failing to reimburse employees for the use of personal items for work, such as personal cellphones, car washes, and laundering their uniforms; 5) failing to include the correct hourly rates and gross and net wages on wage statements issued to employees; 6) requiring employees to enter into agreements with illegal terms; 7) failing to pay all paid sick time; and 8) failing to notify employees that calls made from the RingCentral app were being recorded. *See* Exhibit B. Plaintiff has contended that this is a meritorious class and representative 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.

1 Defendant has denied all of Plaintiff's allegations in their entirety and any liability or
2 wrongdoing of any kind. *See* Declaration of Brittany V. Berzin ("Decl. Berzin"), ¶ 5. Defendant has
3 denied that this case is appropriate for class certification or representative treatment, other than for
4 purposes of settlement, and that Plaintiff would have difficulty proving class certification or
5 representative treatment is proper here. *See id.* However, subject to approval by the Court, the parties
6 have been able to compromise and settle all asserted claims for monetary compensation as a result of
7 extensive investigations, informal document and data exchanges, and extended negotiations relating to
8 all aspects of the asserted claims. *See* Exhibit A. Plaintiff's counsel is convinced that the proposed
9 settlement is in the best interest of the putative class based on the discovery, investigations,
10 negotiations, and a detailed knowledge of the issues in this case. *See* Decl. Berzin, ¶¶ 3, 6-10. The
11 prospect of potential class certification issues and the uncertainty of class certification, difficulties of
12 complex litigation, the lengthy process of establishing specific damages and various possible delays
13 and appeals were carefully considered by Plaintiff and Plaintiff's counsel in agreeing to the proposed
14 settlement. *See id.*

15 It is well within the discretion of this Court to grant preliminary and conditional approval of the
16 Agreement, which satisfies all of the criteria for preliminary settlement approval under California law.
17 Accordingly, Plaintiff requests that the Court: (1) provisionally and conditionally certify the proposed
18 settlement class; (2) grant preliminary and conditional approval of the proposed Agreement (Exhibit
19 A); (3) set dates for and direct distribution to the class of the Notice of Settlement (Exhibit F), which
20 provides Class Members and alleged Aggrieved Employees information regarding the settlement,
21 including information regarding Class Members' opportunity to opt-out of, or object to, the settlement
22 and notifies each Class Member and alleged Aggrieved Employee of their expected pro rata share of
23 the settlement; and (4) adopt the implementation schedule contained in the proposed order and schedule
24 a final approval hearing.

25 **II. PROCEDURAL AND LITIGATION HISTORY**

26 Plaintiff filed a class action complaint on approximately May 12, 2021, in the Sacramento
27 County Superior Court against Defendant. Plaintiff exhausted administrative remedies under the
28 PAGA by providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code §

2699.3(a), (c); Decl. Berzin, ¶ 3. Then, Plaintiff filed a First Amended Class Action Complaint on approximately August 31, 2021 to include a PAGA claim. *See id.*; Exhibit B. There is no date set for a motion for certification or trial in this matter. *See* Decl. Berzin, ¶ 4.

III. INVESTIGATION AND DISCOVERY CONDUCTED

Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and potential damages for such claims. *See id.* Plaintiff experienced the practices of Defendant that were alleged to be unlawful in the lawsuit and provided information regarding these practices, enabling pre-filing investigations to take place. *See* Decl. Uribe ¶¶ 3, 5. The parties engaged in informal discovery and exchange of documents, including a representative sampling of employee data, such as timecards, paystubs, payroll data and relevant policies for the entirety of the statute of limitations applicable to the alleged claims. The discovery covered all aspects of the asserted claims, including certification issues, merits issues, damages, the scope and configuration of Class Members and alleged Aggrieved Employees, the content and implementation of the wage and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas. *See* Decl. Berzin, ¶ 7. The information allowed Plaintiff to determine the extent and frequency of any violations in accordance with Plaintiff's contentions and create an accurate damages model to assess the reasonableness of any settlement. *See id.*

IV. NEGOTIATION AND PROPOSED SETTLEMENT

a. Plaintiff and Defendant Engaged in Extensive Arm's Length Negotiations

The final settlement occurred only after extended, and sometimes contentious, arm's length negotiations. Over the course of nearly one year, Plaintiff has been investigating the claims and discussing with Defendant's counsel the merits of the claims and certification issues present in this case. *See id.* at ¶¶ 6-10. The parties exchanged substantial amounts of information and legal analysis regarding the asserted claims. *See id.* Then, only after nearly one year of litigation and negotiation, which included a full day mediation with Russ J. Wunderli, Esq., the parties were able to reach a mutually agreeable settlement. *See id.* at ¶ 8. In light of the claims and defenses at issue, the parties agreed to a Gross Settlement Amount of \$310,000. *See* Exhibit A.

//

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

2 Under the Agreement, Defendant has agreed to the following:

3 1. The following groups of individuals are covered by the Settlement (*See* Exhibit A, ¶¶
4 1.2, 1.8, 1.9, 1.26):

5 Aggrieved Employees: all non-exempt employees who have worked, or
6 continue to work, for Defendant in California from April 28, 2020 up to
7 May 2, 2022.

8 Class Members: all non-exempt employees who have worked, or continue
9 to work, for Defendant in California from May 12, 2017 up to May 2,
10 2022.

11 2. Pay the Gross Settlement Amount of \$310,000, exclusive of the employer's share of
12 payroll taxes, to resolve and release the claims alleged in the Complaint. *See id.* at ¶¶ 5.1, 5.2.
13 Aggrieved Employees will still be paid their share of the PAGA Payment regardless of whether they
14 opt out of being Class Members. *See id.* at 7.5.1.

15 3. Any prior non-compete agreements Defendant entered into with Class Members and
16 Aggrieved Employees are void and unenforceable. *See id.* at ¶ 7.2. The proposed notice to be sent to
17 Class Members will state this information. *See* Exhibit F.

18 4. Defendant will not object to Plaintiff's request for up to \$15,000 for Plaintiff Michael
19 Uribe as a Class Representative Enhancement Payment, and as consideration for his execution of a Cal.
20 Civil Code of Procedure 1542 waiver. This amount will be in addition to any amount Plaintiff may be
21 entitled to under the terms of the Agreement. *See* Exhibit A, ¶ 5.4.

22 5. The parties agree that the cost of administering this class action settlement shall be paid
23 from the settlement proceeds. Subject to Court approval, the parties have selected ILYM Group, Inc. to
24 act as the Claims Administrator, who has provided a maximum cost estimate of \$8,000 to administer
25 the class settlement. *See* Exhibit D (ILYM Group, Inc. Quote). The difference between any actual
26 administration costs and the \$10,000 allocated under the Agreement, if any, will be added to the Net
27 Settlement Amount and paid to Class Members on a pro rata basis. *See* Exhibit A, ¶ 5.3.

28 6. The parties agree that \$10,000 of the Gross Settlement Amount shall be allocated to
resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See id.* at 5.5.

1 7. Defendant will not oppose any application for Plaintiff's attorneys' fees up to thirty-five
2 percent (35%) of the Gross Settlement Amount (\$108,500) incurred in the litigation of this case. *See*
3 *id.* at ¶ 5.2. Additionally, Defendant agreed not to oppose Plaintiff's request for reimbursement of
4 actual litigation costs as approved by the Court in an amount not to exceed \$7,500. *See id.* The
5 difference between any actual costs and the \$7,500 will be redistributed to Class Members on a pro rata
6 basis. *See id.* The proposed notice to be sent to Class Members will state this information. *See* Exhibit
7 F.

8 8. Any Claims Administrator Costs, any amounts paid for attorneys' fees and costs, the
9 Class Representative Enhancement Payment, and PAGA Payment will be paid out from the Gross
10 Settlement Amount, not in addition to the Gross Settlement Amount. *See* Exhibit A, ¶¶ 5.1-5.5.

11 9. In consideration for the value received in the Agreement, Class Members who fail to
12 timely opt-out of this settlement will waive all Qualified Claimant's Released Claims as set forth in the
13 Agreement. *See* Exhibit A, ¶¶ 1.30-1.31. Aggrieved Employees will waive all Released PAGA Claims
14 as set forth in the Agreement regardless of whether they opt out of being a Class Member, upon
15 approval by the Court. *See id.* at 1.33, 7.5.1.

16 10. For any portion of the Net Settlement Amount or PAGA Payment allocated to Qualified
17 Claimants and/or Aggrieved Employees that is not claimed by them by cashing their respective
18 settlement checks within 180 days, the remaining amount shall escheat to the State of California
19 Unclaimed Property Fund to be held in the name of each expired check payee, pursuant to applicable
20 unclaimed property laws. *See* Exhibit A, at ¶ 5.6.

21 **c. Allocation of Settlement Funds**

22 Payment to Qualified Claimants and Aggrieved Employees of their Claim Amount will not
23 require the submission of a claim form. A Net Settlement Amount will be determined by subtracting
24 from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, any
25 Enhancement Payment to the Class Representative, the Claims Administrator Costs, and the PAGA
26 Payment. Each Class Member's share will be determined by dividing their total weeks worked within
27 the Class Period by the total weeks worked by all Class Members within the Class Period. That
28 fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's

individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. *See* Exhibit A, at ¶ 5.8.

V. ARGUMENT

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

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

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

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

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 nearly one year, which included a full day mediation with Russ J. Wunderli, Esq. *See Decl.*
19 *Berzin*, ¶¶ 6-10. At all times, the negotiations were adversarial and contentious, although still
20 professional in nature. *See id.* Further, while Plaintiff contends he would ultimately prevail on the
21 claims and the issue of certification and representative treatment, this is not a certainty and there is
22 substantial risk in proceeding to further litigation. *See id.* at ¶¶ 6-10. The ability to secure a guaranteed
23 settlement now and ensure Class Members and Aggrieved Employees receive some compensation,
24 rather than proceed to further litigation and potentially recover nothing, was a motivating factor in
25 reaching this settlement. *See id.*

26 //

27 //

28 //

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

3 The parties were in possession of all necessary information during the negotiations. The parties
4 engaged in substantial informal discovery and exchange of documents, including a representative
5 sampling of employee data, such as timecards, paystubs, payroll data and relevant policies for the
6 entirety of the statute of limitations applicable to the alleged claims, which covered all aspects of the
7 class and representative claims and helped thoroughly vet the extent of Plaintiff's claims against
8 Defendant and create an accurate damages model. *See id.* at ¶ 6-10. Plaintiff was in possession of this
9 information prior to calculating the potential damages in this case. *See id.* As a result, Plaintiff was
10 able to make a reasonable estimation of Defendant's potential liability. *See id.* For these reasons, the
11 settlement now before the Court was reached at a stage where “the parties certainly have a clear view of
12 the strengths and weaknesses of their cases” sufficient to support the settlement. *Boyd v. Bechtel Corp.*,
13 485 F.Supp. 610, 617 (N.D. Cal. 1979).

14 **iii. Plaintiff's Counsel are Experienced in Similar Litigation**

15 Plaintiff's counsel has considerable experience in class and PAGA actions and wage and hour
16 litigation. Plaintiff's counsel has brought and are currently bringing several wage and hour class and/or
17 PAGA actions. Thus, Plaintiff's counsel are qualified to evaluate the class claims, value of settlement
18 versus moving for certification and going to trial, and the viability of possible affirmative defenses. *See*
19 *Decl. Berzin*, ¶¶ 11-16. Plaintiff's counsel believes that the settlement is fair and reasonable in light of
20 the complexities of the case, the uncertainties of class certification and litigation, Defendant's defenses
21 and contentions challenging the propriety of this action, such as arbitration agreements that could
22 preclude Class Members and Aggrieved Employees from participating in the action, and the secured
23 benefit to the class. *See id.* at ¶¶ 5-6.

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

26 A review of the Agreement's terms does not give rise to any doubts about its fairness. Based on
27 the records and facts of this case, Plaintiff has secured a gross recovery of approximately 23.1% and a
28 net recovery of approximately 12% of the claims' maximum likely value. *See id.* at ¶¶ 9-10.
Additionally, the average net award per class member is approximately \$1,523.58. *See id.* This

1 settlement is a reasonable compromise of the class and PAGA claims, and is within the percentile
2 ranges of the total available damages that have been approved in other class settlements. *See Wershba*,
3 91 Cal. App. 4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1990); *Officers*
4 *for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re Omnivision*
5 *Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in settlement of
6 6% of maximum potential recovery after reduction for attorney’s fees was higher than median
7 percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from 2000
8 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) (approving
9 a settlement where the net recovery to class members was approximately 7.5% of the projected
10 maximum recovery amount); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D.
11 Cal. 2017): (approving a settlement with a gross recovery of 11% of the projected maximum damages
12 available and a net recovery of approximately 6.7% of the projected maximum recovery);
13 *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal 2015) (approving a settlement where
14 the gross recovery was approximately 8.5% of the projected maximum recovery).

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

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

1 period experience, and a companion action alleging less than \$5,000,000 in damages. This information
2 constituted “an adequate basis from which to garner a reasonably adequate understanding of the amount
3 that is in controversy within the meaning of *Kullar*.” *Id.*

4 Plaintiff similarly relied upon payroll data and Class Members’ data to determine the realistic
5 potential damages suffered by the class as a whole. *See* Decl. Berzin, ¶¶ 6-10. This analysis allowed
6 Plaintiff to determine the extent and frequency of potential violations on all claims as to all Class
7 Members. *See id.* Ultimately, Plaintiff secured a percentage of the total demand for the putative class
8 that is within the range of what has been found to be sufficient in several other cases. *See, supra*,
9 Section V.c.iv; *see also, e.g., In re Omnivision Technologies, Inc.*, 559 F.Supp.2d at 1042; *Reed v. 1-*
10 *800 Contacts, Inc.*, 2014 U.S. Dist. LEXIS 255 (S.D. Cal. 2014) (approving a settlement of \$11.7
11 million where the maximum range of damages was \$5,000 for each of the alleged 300,000 instances of
12 unlawful recording violations (\$1.5 billion), equaling approximately .78% of the total demand and
13 approximately \$800 per class member). This settlement represents a reasonable compromise given the
14 percentage of the total demand that was secured, the average recovery per class member, the Court’s
15 ability and discretion to cut PAGA penalties, the uncertainty of class certification, the risk that
16 arbitration agreements between Defendant and Class Members and Aggrieved Employees would
17 preclude them from participating in this action, the risk that litigation would be more difficult due to
18 Defendant being a small family owned and operated business, Defendant’s limited resources as a small
19 business, and the additional value of non-monetary recovery to Class Members and Aggrieved
20 Employees from Defendant’s agreement that any non-compete agreements it entered into with Class
21 Members and Aggrieved Employees are void and unenforceable. *See* Decl. Berzin, ¶¶ 5, 9-10.

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

24 The Enhancement Payment to the named Plaintiff is intended to recognize the time and effort
25 expended on behalf of the class. Indeed, Courts routinely approve enhancement payments to
26 compensate named plaintiffs for the services they provide and the risks they incurred during the course
27 of the class action litigation. *See Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001).
28 In *Ingram*, the Court approved enhancement payments of \$300,000.00 to each named plaintiff in

1 recognition of the services they provided to the class by responding to discovery, participating in the
2 mediation process, and taking the risk of stepping forward on behalf of the class. *See Id.* at 694; *see*
3 *also Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00
4 enhancement payment).

5 In this case, Plaintiff provided and explained documents, being available at all times to discuss
6 the case with Plaintiff's counsel. *See* Decl. Berzin, ¶ 7; Decl. Uribe, ¶ 5. Plaintiff spent a significant
7 amount of time pursuing this litigation for the benefit of all Class Members. *See id.* Plaintiff brought
8 this action knowing there would be a delay in any payment as the litigation progressed, rather than
9 proceeding on individual claims in front of the California Labor Commissioner. *See id.* Payment of
10 \$15,000 to Plaintiff is appropriate given the risk, assistance, time required in bringing this case and
11 resolution of this case.

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

14 California state and federal courts have recognized that when a litigant's efforts create or
15 preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally
16 among all the beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert*,
17 444 U.S. 472, 477-478 (1980) ("A lawyer who recovers a common fund for the benefit of persons other
18 than . . . her client is entitled to a reasonable attorney's fee from the fund as a whole."); *Vincent v.*
19 *Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375
20 (1970); *Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999); *see also Serrano v.*
21 *Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016).
22 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation
23 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
24 burden alone." *Vincent*, 557 F.2d at 769; *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026,
25 1027 (9th Cir. 1977). California state courts have approved use of a percentage of the fund to calculate
26 reasonable attorney fee awards where the amount of the settlement is certain or is an easily calculable
27 sum of money. *See Dunk*, 48 Cal. App. 4th at 1808.

28 The Ninth Circuit has also held that the common fund doctrine applies when: (1) the class of

1 beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the fee can be
2 shifted with some exactitude to those benefitting. *See Paul, Johnson, Alston & Hunt v. Graulity*, 886
3 F.2d 268, 271 (9th Cir. 1989). These criteria are “easily met” when “each member of a certified class
4 has an undisputed and mathematically ascertainable claim to part of a lump-sum settlement recovered
5 on her behalf.” *Id.* at 271 (citations omitted). Under the three (3) factors set forth in *Paul, Johnson,*
6 *Alston & Hunt*, the common fund doctrine applies in this case because there is a sufficiently identifiable
7 class of beneficiaries (*e.g.* the settlement class), the benefits can be accurately traced to the settlement
8 Plaintiff and Plaintiff’s counsel were able to negotiate on behalf of the class, and the fee can be shifted
9 with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the common
10 fund. As set forth in the fee award examples provided below for the Court’s reference, it is an accepted
11 practice in wage and hour class action settlements to award attorneys’ fees based on a percentage of the
12 common fund. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 967-972 (9th Cir. 2003); *Sanders v. City*
13 *of Los Angeles*, 3 Cal.3d 252, 261, 263 (1970); *Wershba*, 91 Cal. App. 4th at 254; *Bell v. Farmers Ins.*
14 *Exchange*, 115 Cal. App. 4th 715, 726, 765 (2004).

15 Historically, attorneys’ fee awards in common fund cases in general range from 20% to 50% of
16 the fund, depending on the circumstances of the case. *See Newberg on Class Actions*, (3rd Ed.), 1992,
17 §14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are
18 generally approved as reasonable in wage and hour settlements below \$10 million:

19 More particularly, courts may award attorneys fees in the 30-40% range in wage and hour
20 class actions that result in recovery of a common fund under \$10 million. *See Vasquez v.*
21 *Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-492 (E.D. Ca. 2010) (citing to five
22 recent wage and hour class actions where federal district courts approved attorney fee
23 awards ranging from 30 to 33%); *Singer v. Becton Dickenson and Co.*, 2010 U.S. Dist.
24 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).

25 *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796 at *22-23 (S.D. Cal. 2011). Plaintiff’s
26 request of thirty-five percent (35%) of the settlement sum for attorneys’ fees is within established rates
27 for fee awards in class settlements pursuant to the common fund doctrine, especially in light of the
28 excellent results achieved in this case. *See In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379

(N.D. Cal. 1989); *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-00634; *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745; *Green, et al. v. Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069; *Benitez et al. v. Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122; *Chavez et al. v. Petrissans et al.*, USDC Eastern District, Case No. 1:08-cv-00122; *Willis et al. v. Cal-Western Transport*, USDC Eastern District, Case No. 1:00-cv-05695. To determine whether a percentage is reasonable, a court should consider: (1) the percentage that would likely be negotiated between parties in a similar case; (2) the percentage applied in other class actions; (3) the quality of class counsel; (4) the size of the award; and (5) whether there are any objections by class members. *See In re Ikon Office Solutions, Inc. Secur. Litig.*, 194 F.R.D. 166, 193 (E.D. Pa. 2000); *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, 71 (C.D. Cal. 2005) (“the absence of objections or disapproval by class members to class counsel’s fee request further supports finding the fee request reasonable”).

These factors support Plaintiff’s request for reasonable attorneys’ fees. The typical percentage negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation depending on the complexity of the case. In class action litigation, the typical percentage negotiated between parties ranges from thirty to forty percent (30% to 40%) based on the same factors. Plaintiff’s request of 35% falls within these typical fee arrangements. *See Decl. Berzin*, ¶ 17. The quality of counsel and the average size of settlement payments to Class Members and Aggrieved Employees (\$1,523.58) also support the fee request when compared to other settlements courts have considered as good results. *See Schiller v. David’s Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal. 2012) (“Class Members will receive an average of approximately \$198.70, with the highest payment to a Class Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is highlighted by the fact that there was no objection to the settlement amount or the attorneys’ fees requested.”); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) (“the results achieved in this case were very favorable. Class members are provided with immediate monetary relief, with an average award of around several hundred dollars and a minimum award of \$50”).

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1 **viii. The Distribution Of Any Uncashed Checks To the State of California Unclaimed**
2 **Property Fund Is Appropriate**

3 Code of Civil Procedure section 384(b) provides for the payment of “unpaid residue” in class
4 actions to nonprofit organizations. However, section 384 is only applicable “when the parties have not
5 made other provisions for those funds.” *See In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 718, 722
6 (2006) (“Under our interpretation, the procedure of section 384, subdivision (b) does not apply to a
7 judgment approving a settlement agreement that includes its own provisions for distribution of any
8 unpaid residue.”) The legislative history for section 384 reveals that the legislature contemplated
9 attorneys, subject to court approval, would determine where to distribute any residue by including such a
10 provision in the class action settlement agreement. *See id.* at 720. Section 384 was enacted to apply
11 where the settlement agreement is silent regarding treatment of any residue and the court therefore must
12 make the decision as to the distribution. *See id.*

13 In this case the parties plan to provide the value of any uncashed checks after 180 days to the
14 State of California Unclaimed Property Fund to be held in the name of each expired check payee,
15 pursuant to applicable unclaimed property laws. The treatment of uncashed checks in this manner is
16 fair, reasonable, and adequate because class members who do not cash their checks within the time
17 provided will not lose their share of the settlement and still have an opportunity to claim it. Because
18 the parties’ agreement provides a plan for distribution, section 384 does not apply. Even to the extent a
19 court were to apply section 384 to this settlement, because all funds are being distributed or held for
20 putative class members in the unclaimed property fund, there is no residue to distribute.

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

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

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

2 The proposed settlement class is ascertainable because all putative class members can be readily
3 identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7 Cal.5th
4 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166
5 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 106 individuals
6 who fall within the definition of Class Member, which makes joinder of all members impracticable.
7 *See Gay v. Waiters' & Dairy Lunchmen's Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff'd* 694 F.2d 531
8 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (noting no set minimum to
9 meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus,
10 these requirements are satisfied.

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

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

22 The common questions of law and fact in this case stem from Plaintiff's contention that
23 Defendant violated California law by 1) failing to pay Plaintiff, Class Members, and Aggrieved
24 Employees for all hours worked; 2) failing to pay the correct regular rates of pay due to failing to
25 account for the value of commissions, bonuses, and different rates of pay being paid within the same
26 workweek; 3) failing to authorize and permit all meal and rest periods and failing to keep track of
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).

whether employees took meal periods; 4) failing to reimburse employees for the use of personal items for work, such as personal cellphones, car washes, and laundering their uniforms; 5) failing to include the correct hourly rates and gross and net wages on wage statements issued to employees; 6) requiring employees to enter into agreements with illegal terms; 7) failing to pay all paid sick time; and 8) failing to notify employees that calls made from the RingCentral app were being recorded. *See* Exhibit B. The waiting time penalties, unfair competition, and PAGA claims are derivative of these violations. *See id.* Plaintiff and the Class Members seek the same remedies under state law. Under these specific circumstances, the commonality and predominance requirements are satisfied. Regarding the typicality requirement, Plaintiff contends he suffered from the same unlawful policies/practices, treatment, and circumstances as Class Members did, will request the same remedies, and will rely on the same methods of proof to establish liability and damages. *See id.* Thus, the typicality requirement is also satisfied for settlement purposes.

iii. The Adequacy Requirement is Met

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

There is no conflict of interest between Plaintiff and Class Members. Plaintiff and Plaintiff's counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class. Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this case by speaking with Plaintiff and reviewing substantial amounts of documents. Plaintiff's counsel thereafter engaged Defendant's counsel in settlement discussions over the course of nearly one year. Moreover, Plaintiff's counsel has experience defending and bringing wage and hour claims. Because Plaintiff's

1 counsel has vigorously pursued Plaintiff's and the Class Members' claims, the adequacy requirement is
2 met. *See generally* Decl. Berzin.

3 **VI. CONCLUSION**

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

11
12
13 Dated: September 23, 2022

Shimoda & Rodriguez Law, PC

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15
16 By: 
17 Galen T. Shimoda
18 Justin P. Rodriguez
19 Brittany V. Berzin
20 Attorneys for Plaintiff
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individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

MICHAEL URIBE, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

ECOGUARD PEST MANAGEMENT, INC.,
a California Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 34-2021-00300650

CLASS ACTION

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

Reservation No.: 2658835

Date: October 21, 2022

Time: 9:00 a.m.

Dept.: 25

Judge: Hon. Jill H. Talley

Filed: May 12, 2021

FAC Filed: August 31, 2021

Trial Date: None Set

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

Dated: September 23, 2022

Shimoda & Rodriguez Law, PC

By: _____



Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff

EXHIBIT A

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17 Attorneys for ECOGUARD PEST MANAGEMENT, INC.

18 **SUPERIOR COURT OF CALIFORNIA**
19 **FOR THE COUNTY OF SACRAMENTO**

20 MICHAEL URIBE, individually and on behalf
21 of all other similarly situated employees,

22 Plaintiff,

23 vs.

24 ECOGUARD PEST MANAGEMENT, INC., a
25 California Corporation; and DOES 1 to 100,
26 inclusive,

27 Defendant.

Case No.: 34-2021-00300650

**JOINT STIPULATION REGARDING CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

Filed: May 12, 2021
FAC Filed: August 31, 2021
Trial Date: None Set

1 This Joint Stipulation Regarding Class Action and PAGA Settlement and Release is made and
2 entered into between the Plaintiff Michael Uribe (“Plaintiff”), on behalf of himself, the Labor and
3 Workforce Development Agency, Class Members, and Aggrieved Employees, and Defendant EcoGuard
4 Pest Management, Inc. (“Defendant”). This Agreement is subject to the terms and conditions set forth
5 below and the approval of the Court.

6 **1. DEFINITIONS**

7 The following terms, when used in this Agreement, have the following meanings:

8 1.1 “Action” means the above stated lawsuit, *Uribe v. EcoGuard Pest Management, Inc.*,
9 Sacramento County Superior Court, Case No. 34-2021-00300650, filed May 12, 2021.

10 1.2 “Aggrieved Employee(s)” means all non-exempt employees who have worked, or continue
11 to work, for Defendant in California during the PAGA Claim Period. The estimated number of Aggrieved
12 Employees is approximately 98.

13 1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Joint Stipulation
14 Regarding Class Action and PAGA Settlement and Release.

15 1.4 “Attorneys’ Fees and Costs” means attorneys’ fees approved by the Court for Class
16 Counsel’s litigation and resolution of the Actions, and all actual costs incurred and to be incurred by
17 Class Counsel in the Action.

18 1.5 “Claim Amount” means an individual Class Member’s and Aggrieved Employee’s
19 allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in Sections 1.21,
20 1.25, 5.5, and 5.8.

21 1.6 “Claims Administrator” means and refers to ILYM Group, Inc., the third-party entity that
22 will administer the Agreement as outlined in Sections 4 and 7, or any other third-party class action
23 settlement claims administrator agreed to by the Parties and approved by the Court for the purposes of
24 administering this Agreement. The Parties each represent that they do not have any financial interest in
25 the Claims Administrator or otherwise have a relationship with the Claims Administrator that could create
26 a conflict of interest.

27 1.7 “Claims Administrator Costs” means the fees and expenses reasonably incurred by the
28 Claims Administrator as a result of the procedures and processes expressly required by this Agreement,

1 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
2 preparation, custodial fees, and accounting fees incurred by the Claims Administrator; all costs and fees
3 associated with preparing, issuing and mailing any and all notices and other correspondence to Class
4 Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class
5 Members and/or Aggrieved Employees, Class Counsel, and Defendant's Counsel; all costs and fees
6 associated with computing, processing, reviewing, and paying the Claim Amounts, and resolving disputes;
7 all costs and fees associated with calculating tax withholdings and payroll taxes, if any, making related
8 payment to federal and state tax authorities, if any, and issuing tax forms relating to payments made under
9 the Agreement; all costs and fees associated with preparing any tax returns and any other filings required
10 by any governmental taxing authority or agency; all costs and fees associated with preparing any other
11 notices, reports, or filings to be prepared in the course of administering Claim Amounts; and any other
12 costs and fees incurred and/or charged by the Claims Administrator in connection with the execution of
13 its duties under this Agreement.

14 1.8 "Class Counsel" means Galen T. Shimoda, Justin P. Rodriguez and Brittany V. Berzin of
15 Shimoda & Rodriguez Law, PC.

16 1.9 "Class Member(s)" means all non-exempt employees who have worked, or continue to
17 work, for Defendant in California during the Class Period. The estimated number of Class Members is
18 approximately 106.

19 1.10 "Class Period" means May 12, 2017 up to either (1) the Preliminary Approval Date, or (2)
20 May 2, 2022, whichever is earlier.

21 1.11 "Class Representative" means Plaintiff Michael Uribe.

22 1.12 "Complaint" means the operative Complaint on file in the Action with the Court.

23 1.13 "Court" means the Sacramento County Superior Court.

24 1.14 "Defendant" means EcoGuard Pest Management, Inc.

25 1.15 "Defendant's Counsel" means Seyfarth Shaw LLP.

26 1.16 "Enhancement Payment" means the amount approved by the Court to be paid to the Class
27 Representative in recognition of the time and effort expended on behalf of Class Members for the benefit
28

1 of Class Members, which is in addition to any Claim Amount paid to the Class Representative as a
2 Qualified Claimant.

3 1.17 "Effective Date" means the Final Approval Date unless there is a timely objection
4 lodged that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th
5 calendar day after a signed order approving this settlement has been filed provided no appellate
6 proceeding having been filed; or (b) seventh (7th) calendar day after any appellate proceeding opposing
7 the settlement has been finally dismissed with no material change to the terms of this settlement and
8 there is no right to pursue further remedies or relief, whichever is later.

9 1.18 "Final Approval Date" means the date a signed order granting final approval of this
10 Agreement is filed with the Court.

11 1.19 "Gross Settlement Amount" is the sum of Three Hundred Ten Thousand Dollars and No
12 Cents (\$310,000).

13 1.20 "LWDA" means the California Labor and Workforce Development Agency.

14 1.21 "Net Settlement Amount" is the portion of the Gross Settlement Amount available for
15 distribution to Qualified Claimants, as described in this Agreement, after deduction of Attorneys' Fees
16 and Costs, Claims Administrator Costs, the PAGA Payment, and Enhancement Payment to the Class
17 Representative.

18 1.22 "Notice of Settlement" means the document substantially in the form attached hereto as
19 Exhibit 1.

20 1.23 "Notice Period" means forty-five (45) calendar days from the initial mailing of the Notice
21 of Settlement to Class Members and Aggrieved Employees.

22 1.24 "PAGA" means Private Attorneys General Act.

23 1.25 "PAGA Payment" means the amount allocated from the Gross Settlement Amount towards
24 resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

25 1.26 "PAGA Claim Period" means April 28, 2020 up to up to either (1) to the Preliminary
26 Approval Date or (2) May 2, 2022, whichever is earlier.

27 1.27 "Parties" mean Defendant and Plaintiff, as an individual and on behalf of the State of
28 California..

1 1.28 “Preliminary Approval Date” means the date a signed order granting preliminary approval
2 of this Agreement is filed with the Court.

3 1.29 “QSF” means a Qualified Settlement Fund set up by the Claims Administrator for the
4 benefit of the Qualified Claimants and/or Aggrieved Employees and from which the payments under this
5 Agreement shall be made. Any amounts Defendant has agreed to pay under this Agreement shall remain
6 the property of Defendant until the payments required under the Agreement are made.

7 1.30 “Qualified Claimant” means any and all Class Members who have not made any timely
8 request to opt-out of the Agreement.

9 1.31 “Qualified Claimant’s Released Claims” means any and all claims contained in the
10 operative Complaint and any additional wage and hour claims, whether known or unknown, that were or
11 could have been brought based on the facts alleged in any version of the complaints filed in this matter
12 arising during the period from May 12, 2017, through May 2, 2022. The claims released by the Class
13 Members include, but are not limited to, statutory, constitutional, contractual, penal code, or common law
14 claims for wages, damages, unpaid costs or expenses, penalties, liquidated damages, punitive damages,
15 interest, attorneys' fees, litigation costs, restitution, or equitable relief, regardless of the forum in which
16 they may be brought, to the fullest extent such claims are releasable by law, for all claims arising out of
17 or based upon the allegations in the Complaint(s) (a) for failure to properly pay minimum or overtime
18 wages; (b) for failure to provide meal periods or pay premiums in lieu thereof; (c) for failure to provide
19 rest periods or pay premiums in lieu thereof; (d) for failure to pay or provide wages, penalties, premiums,
20 or other compensation at the proper rate of pay; (e) for recordkeeping or wage statement violations; (f) for
21 failure to timely pay wages upon separation and all waiting time penalties; (g) for failure to reimburse
22 employees for business expenses; (h) for unlawfully recording or recording individuals’ conversations
23 without consent, whether under the California Penal Code, in violation of California’s right to privacy, or
24 otherwise; (i) for having employees enter into an illegal contract; (j) for unlawful deductions from pay;
25 and (k) for failure to provide or pay for sick time; and (m) any and all other claims that could have been
26 alleged based on the facts alleged in the Complaint(s) in the action. The released claims include, without
27 limitation, claims meeting the above definition(s) under any and all applicable statutes, including without
28 limitation any provision of the Fair Labor Standards Act, California Labor Code; California Penal Code;

1 and California Bus. & Prof. Code §§ 17200 *et seq.* based on the facts or claims alleged in the Complaint(s)
2 in the action; and any provision of the applicable California Industrial Welfare Commission Wage Orders
3 based on the facts alleged in the Complaint(s) in the action.

4 1.32 “Qualifying Workweeks” are weeks worked by Class Members and/or Aggrieved
5 Employees during the Class Period and/or PAGA Claim Period, respectively, in California. For Class
6 Members, workweeks shall be defined as the total length of service (in days) in California during the Class
7 Period divided by seven. For Aggrieved Employees workweeks shall be defined as the total length of
8 service (in days) in California during the PAGA Claim Period divided by seven. The calculation of a Class
9 Member’s and/or Aggrieved Employee’s workweeks and a determination as to whether a Class Member
10 and/or Aggrieved Employee was actively employed in California in a particular workweek shall be
11 construed from Defendant’s records.

12 1.33 “Released PAGA Claims” means all Private Attorneys General Act claims for civil
13 penalties contained in the operative Complaint or that could have been raised in the operative Complaint
14 based on the allegations set forth therein, through the PAGA Claim Period. Aggrieved Employees cannot
15 opt out of this waiver of claims.

16 1.34 “Released Parties” means Defendant, as well as Defendant’s owners, officers,
17 shareholders, directors, agents, employees, attorneys, and insurers.

18 **2. DESCRIPTION OF THE LITIGATION**

19 2.1 On or about April 28, 2021, Plaintiff sent notice to the LWDA to exhaust administrative
20 remedies under the PAGA for failure to pay overtime wages, failure to provide meal periods or pay
21 premiums in lieu thereof, failure to provide rest periods or pay premiums in lieu thereof, failure to provide
22 accurate wage statements, failure to pay final wages, failure to pay reimbursements for expenses, failure
23 to provide paid sick leave, requiring agreement in writing to illegal employment terms, and failure to pay
24 contract wages and unlawful deductions. The LWDA did not respond to the notice within the statutorily
25 required time frame and, as such, Plaintiff became authorized to act as a Private Attorney General on all
26 alleged PAGA claims.

27 2.2 On or about May 12, 2021, Plaintiff filed a class action Complaint in Sacramento County
28 Superior Court on behalf of himself and Class Members alleging claims for failure to pay overtime wages,

1 meal period violations, rest period violations, wage statement violations, waiting time penalties, failure to
2 reimburse expenses, unfair competition, and violation of right to privacy. Plaintiff filed a First Amended
3 Complaint on approximately August 31, 2021, to add a PAGA cause of action based on the violations
4 alleged in the April 28, 2021, notice to the LWDA on behalf of himself and Aggrieved Employees.

5 2.3 Through informal discovery, Defendant and Defendant's Counsel provided Class
6 Counsel with copies of all applicable versions of its policies and procedures, employee handbooks,
7 sample expense reimbursement records and receipts, sample call recording authorization notices, sample
8 employee compensation plans, communications with the Plaintiff, a copy of an arbitration agreement
9 between Defendant and some Class Members and Aggrieved Employees, information on Class Members
10 and Aggrieved Employees including, but not limited to, Class Members' and Aggrieved Employees'
11 workweeks and pay periods during the applicable claim periods, total number of Class Members and
12 former Class Members (and Aggrieved Employees), their average rate of pay, as well as timecard and
13 payroll data for a randomly selected sample of Class Members and Aggrieved Employees.

14 2.4 On March 3, 2022, the Parties participated in a lengthy mediation with private mediator
15 Russ J. Wunderli, Esq. At the conclusion of the mediation, the Parties were able to come to a resolution.
16 At all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.

17 2.5 Discussions between Plaintiff and Class Counsel, between counsel for the Parties,
18 document productions, extensive legal analysis, the provision of information by Defendant to Plaintiff and
19 the detailed analysis of the records, have permitted each side to assess the relative merits of the claims and
20 the defenses to those claims.

21 2.6 In the Action, Plaintiff contends that Defendant violated California law by 1) failing to pay
22 the correct regular rates of pay and overtime rates of pay due to failing to account for the value of non-
23 discretionary remuneration, such as bonuses being paid; 2) failing to authorize and permit all meal and
24 rest periods; 3) entering into employment contracts that included illegal terms of employment; 4) failing
25 to provide all paid sick time owed, including at least 24 hours of accrued sick time by the 120th day of
26 employment; 5) failing to reimburse business expenses; and 6) failing to notify employees that calls
27 through the RingCentral app were being recorded. Defendant has denied each of Plaintiff's claims and
28 Defendant has denied that this Action is appropriate for class certification for anything other than

1 settlement purposes. The agreed upon Gross Settlement Amount was reached after evaluating the Parties'
2 theories of potential exposure for the underlying claims and the class data supporting these claims. The
3 Parties, with the assistance of the mediator, also assessed appropriate discounts to the potential liability
4 based on Defendant's factual and legal contentions and defenses.

5 2.7 The Parties agree that the above-described investigation and evaluation, as well as
6 discovery and the information exchanged to date, are more than sufficient to assess the merits of the
7 respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class
8 Counsel, Defendant, and Defendant's Counsel have concluded that it is desirable that the Action be settled
9 in a manner and upon such terms and conditions set forth herein in order to avoid further expense,
10 inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the
11 Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action.
12 Plaintiff, Class Counsel, Defendant, and Defendant's Counsel are of the opinion that the Agreement for
13 the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts
14 and circumstances.

15 **3. THE CONDITIONAL NATURE OF THIS AGREEMENT**

16 3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose
17 of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed
18 claims. Because the Action was pled as a class and representative action, this Agreement must receive
19 preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement and
20 associated settlement on a conditional basis. If the Court does not enter an order granting final approval
21 of the Agreement, or if the Court's approval of the settlement is reversed or materially modified on
22 appellate review, this Agreement shall be deemed null and void; it shall be of no force or effect
23 whatsoever; it shall not be admissible, referred to or utilized for any purpose whatsoever in this or any
24 other proceeding that this case could proceed as a class or representative action through trial as Plaintiff
25 proposes or that Defendant is liable in any way to Plaintiff or Class Members or Aggrieved Employees;
26 and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California
27 Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of
28 evidence that may be applicable.

3.2 Defendant has denied all claims as to liability, damages, liquidated damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant has agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or the Final Approval Date does not occur, Defendant does not waive, but rather expressly reserve, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge class, collective, or representative treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

3.3 If the Court awards a lower Enhancement Payment, amount of Claims Administrator Costs, or amount of Class Counsel's Attorneys' Fees and Costs, the other terms of this Agreement shall apply. The Enhancement Payment, amount of Claims Administrator Costs, and amount of Class Counsel's Attorneys' Fees Costs are not material terms of this Agreement and the award of any of these items at less than requested by Plaintiff does not give rise to a basis to abrogate this Agreement.

4. SCOPE OF THE AGREEMENT

4.1 The scope of the class of individuals encompassed under the Agreement, who are entitled to all benefits as authorized under the Agreement and subject to all obligations and duties required under the Agreement, shall include all Class Members as defined in Section 1.9 and all Aggrieved Employees as defined in Section 1.2. However, it shall not include any Class Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in Section 7.5.1.

4.2 Individuals entitled to recover under this Agreement will include only those individuals who are identified as being within the scope of this Agreement under Section 4.1.

4.3 Any person who believes that they are a Class Member or Aggrieved Employee and wishes to participate in the Agreement, but did not receive a Notice of Settlement because their name did not appear on the class list provided to the Claims Administrator prior to mailing, may submit a data request to the Claims Administrator. The data request must contain all of the following information: (a) the full name and, if applicable, Social Security Number of the individual making the request; (b) the name used by such employee as of the time their employment with Defendant ended; (c) the years during which such employee was employed with Defendant; and (d) a return address to which a response may be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or otherwise submitted

1 to the Claims Administrator such that it is received before the conclusion of the Notice Period. Upon
2 receipt of any data requests, the Claims Administrator shall promptly (in no event more than two business
3 days) transmit the data requests to Defendant's Counsel and request that Defendant review its records.

4 4.4 If Defendant does agree that the person listed in a data request is a Class Member and/or
5 Aggrieved Employee, the Claims Administrator shall promptly mail a Notice of Settlement to the person
6 who submitted the data request, at the address designated for that purpose in the data request. All
7 provisions of this Agreement relating to the Notice of Settlements shall apply to Notice of Settlements
8 sent in response to data requests, and any person who submits a data request and is sent a Notice of
9 Settlement in response shall be treated by the Claims Administrator as a Class Member and/or Aggrieved
10 Employee for all other purposes.

11 4.5 If Defendant disagrees that the person listed in a data request is a Class Member and/or
12 Aggrieved Employee, Defendant's Counsel and Class Counsel shall attempt to resolve any such dispute
13 in good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request
14 dispute. Defendant's records shall control unless the individual submitting the data request provides
15 persuasive evidence to doubt the accuracy of those records. Each data request dispute that Defendant's
16 Counsel and Class Counsel cannot timely resolve shall be resolved by the Claims Administrator. The
17 Claims Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve
18 the dispute. The Claims Administrator must resolve any dispute submitted to it within seven (7) calendar
19 days after Defendant's Counsel and Class Counsel submit the dispute to the Claims Administrator. The
20 decision by the Claims Administrator shall be final and there shall be no right of appeal.

21 **5. TERMS OF THE SETTLEMENT**

22 The Parties agree as follows:

23 5.1 Gross Settlement Amount: In consideration and exchange for the releases described in
24 Section 6, Defendant shall pay the Gross Settlement Amount (\$310,000). Funding of the Gross Settlement
25 Amount shall occur within 21 calendar days after the Effective Date to be held in trust in a QSF by the
26 Claims Administrator. The Gross Settlement Amount includes payments to Qualified Claimants,
27 payments to Aggrieved Employees, all Attorneys' Fees and Costs related to the Action incurred to date,
28 as well as all such fees and costs incurred in documenting the Agreement, administering the Agreement

(including Claims Administrator Costs), and obtaining final approval of the Agreement, the Enhancement Payment to the Class Representative and the PAGA Payment. Any monies necessary to satisfy Defendant's tax obligations (e.g. employer FICA, FUTA and SDI contributions on wage payments) on any monies distributed to Qualified Claimants will be paid in addition to the Gross Settlement Amount.

5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of 35% of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendant has agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the 35% threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not to exceed \$7,500, which shall be paid from the Gross Settlement Amount. Defendant has agreed to not oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as they do not exceed the \$7,500 threshold. The Claims Administrator will issue Class Counsel an IRS Form 1099 for the attorneys' fees and costs paid under this Agreement. Class Counsel shall be solely and legally responsible for correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts received. The Court's approval of Attorneys' Fees and Costs requested by Class Counsel is not a material term of the Settlement. If the Court does not approve or approves only a lesser amount than that requested by Class Counsel for Attorneys' Fees and Costs, the other terms of the Settlement shall still apply. The Court's refusal to approve the Attorneys' Fees and Costs award requested by Class Counsel does not give Plaintiff or Class Counsel any basis to abrogate the Settlement. In the event that the Court awards less than the requested attorney's fees and/or costs, the portion of the requested amounts not awarded to Class Counsel shall be added to the Net Settlement Amount to be distributed to Qualified Claimants on a pro rata basis.

5.3 Claims Administrator Costs: The Claims Administrator Costs shall be paid from the Gross Settlement Amount and shall not exceed \$10,000. The difference between any actual costs and the allocated \$10,000 shall be added to the Net Settlement Amount to be distributed to Qualified Claimants on a pro rata basis.

5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for an Enhancement Payment to the Class Representative in an amount not to exceed \$15,000 to

1 compensate for the risks, time, and expense of his involvement in the Action and securing the benefits of
2 this Agreement for Class Members. The Enhancement Payment is in addition to the Claim Amount
3 Plaintiff would otherwise be due under the Agreement as a Qualified Claimant. The Enhancement
4 Payment shall also be consideration for Plaintiff's execution of a general release of all claims against
5 Defendant under California Code of Civil Procedure section 1542. Defendant has agreed to not oppose
6 Class Counsel's request for an Enhancement Payment to Plaintiff so long as it does not exceed the
7 amount stated herein. The Enhancement Payment will be designated as a non-wage payment and
8 reported on an IRS Form 1099-MISC. Plaintiff shall be solely and legally responsible for correctly
9 characterizing this compensation for tax purposes and for paying any taxes on the amounts received.
10 Plaintiff agrees to indemnify and hold Defendant harmless from any claim or liability for taxes,
11 penalties, or interest arising as a result of the Enhancement Payment. The Court's approval of an
12 Enhancement Payment is not a material term of the Settlement. If the Court does not approve or
13 approves only a lesser amount than that requested by Class Counsel and Plaintiff for an Enhancement
14 Payment, the other terms of the Settlement shall still apply. The Court's refusal to approve the
15 Enhancement Payment requested by Class Counsel does not give Plaintiff or Class Counsel any basis to
16 abrogate the Settlement. In the event that the Court awards less than the Enhancement Payment amount
17 requested, then any portion of the requested amount not awarded to the Class Representative shall be
18 added to the Net Settlement Amount to be distributed to Qualified Claimants on a pro rata basis.

19 5.5 PAGA Payment: Ten Thousand Dollars and No Cents (\$10,000) of the Gross Settlement
20 Amount shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA
21 Payment will be paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees
22 on a pro rata basis as described below in Section 5.8. Any amount not required by the Court for allocation
23 to the PAGA Payment shall be added to or taken from the Gross Settlement Amount to be distributed to
24 Qualified Claimants on a pro rata basis.

25 5.6 Treatment of Uncashed Checks: For any portion of the Net Settlement Amount or PAGA
26 Payment allocated to Qualified Claimants and/or Aggrieved Employees that is not claimed by cashing
27 their respective settlement checks before the deadline to do so, that remaining amount shall escheat to the
28

1 State of California's Unclaimed Property Fund to be held in the name of each expired check payee,
2 pursuant to applicable unclaimed property laws.

3 5.7 No Additional Benefits Contributions: All Claim Amounts paid to Qualified Claimants and
4 Aggrieved Employees shall be deemed to be income solely in the year in which such amounts were
5 actually received. It is expressly understood and agreed that the receipt of such Claim Amounts will not
6 entitle any Qualified Claimant or Aggrieved Employee to any new or additional compensation or benefits
7 under any company bonus or other compensation or benefit plan or agreement in place during the period
8 covered by the Agreement, nor will it entitle any Qualified Claimant or Aggrieved Employee to any
9 increased retirement, 401(k) and/or 403(b) benefits or matching benefits, or deferred compensation
10 benefits. It is the intent of this Agreement that the Claim Amounts provided for in this Agreement are the
11 sole payments to be made by Defendant to the Qualified Claimants and Aggrieved Employees in
12 connection with this Agreement (notwithstanding any contrary language or agreement in any benefit or
13 compensation plan document that might have been in effect during the period covered by this Agreement).

14 5.8 Pro Rata Distribution Formula: Payment to Qualified Claimants and Aggrieved Employees
15 of their Claim Amount will not require the submission of a claim form. A Net Settlement Amount will be
16 determined by subtracting from the Gross Settlement Amount any amounts for approved Attorneys' Fees
17 and Costs, any Enhancement Payment to the Class Representative, the Claims Administrator Costs, and
18 the PAGA Payment. Each Class Member's share will be determined by dividing their total Qualifying
19 Workweeks within the Class Period by the total Qualifying Workweeks by all Class Members. That
20 fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual
21 share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA
22 Payment will be determined by dividing their total Qualifying Workweeks within the PAGA Claim Period
23 by the total Qualifying Workweeks by all Aggrieved Employees within the PAGA Claim Period. That
24 fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved
25 Employee's individual share. Should any Class Member exclude themselves from the class, their share of
26 the Net Settlement Amount shall be retained by Defendant. Notwithstanding the foregoing, if a Class
27 Member who is also an Aggrieved Employee opts out of the settlement, the Aggrieved Employee will still
28

1 receive their share of the PAGA Payment and will still be deemed to have released all Released PAGA
2 Claims in accordance with section 1.33 of this Agreement.

3 5.9 Tax Allocation: The Parties recognize that the Claim Amounts to be paid to Qualified
4 Claimants and/or Aggrieved Employees reflect a settlement of a dispute over claimed penalties, wages,
5 damages, and interest. The Claims Administrator shall calculate the employer's share of payroll taxes on
6 the amounts paid to Qualified Claimants as wages as well as calculating all required withholdings and
7 deductions from said wage payments. The characterization of Claim Amounts to Qualified Claimants and
8 Aggrieved Employees are as follows:

9 5.9.1 one third (1/3) of each Qualified Claimants' Claim Amount shall be allocated for
10 payment of disputed wages and shall be subject to required employer taxes. Qualified Claimants shall
11 receive an IRS Form W-2 for reporting of this portion of their Claim Amount.

12 5.9.2 two thirds (2/3) of each Qualified Claimants' Claim Amount shall be allocated for
13 disputed statutory penalties, civil penalties, interest, and other non-wage damages and no amount shall be
14 deducted for any taxes. This portion of the Claim Amount consists of other income, not wages, for which
15 the Qualified Claimants shall receive an IRS Form 1099-MISC.

16 5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the
17 PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted
18 for any taxes. This portion of the Claim Amount consists of other income, not wages, for which the
19 Aggrieved Employees shall receive an IRS Form 1099-MISC.

20 5.10 Qualified Claimants and Aggrieved Employees shall be solely responsible for the
21 reporting and payment of their share of any federal, state and/or municipal income or other taxes on
22 payments made pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendant's
23 Counsel free and harmless from any liability for taxes, fees, costs, or assessments resulting from their
24 failure to timely pay their share of taxes, interest, fees, or penalties owed, including the treatment of
25 such payments as not subject to withholding or deduction for payroll and employment taxes. No party
26 has made any representation to any of the other Parties as to the taxability of any payments pursuant to
27 this Agreement, including the payments to Qualified Claimants, the payments to Aggrieved Employees,
28 the payments to Class Counsel, the payments to the Class Representative, the payroll tax liability of

Defendant, or the allocation of the Net Settlement Amount or PAGA Payment to wage and non-wage income as provided in this Section, or otherwise as to tax implications of any provision of this Agreement.

5.11 No Additional Contribution by Defendant: Defendant's monetary obligation under this Agreement is limited to the Gross Settlement Amount and any employer side payroll taxes owed on amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless expressly provided otherwise herein. However, in the event this Agreement is deemed null and void as described in Section 3 because the Court, in its independent determination, finds that the Agreement does not meet the standards for settlement approval, then Defendant and Plaintiff shall be equally responsible for the costs of the Claims Administrator incurred between the date the Agreement was executed and the date of such event.

5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement only, certification of the class as defined in Section 1.9 and 4.1 is appropriate and the requisites for establishing class certification have been met and are met.

5.13 Adequacy of Class Counsel and Class Representatives: The Parties agree that, for purposes of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and Aggrieved Employees.

6. RELEASE

6.1 Release of Claims by Qualified Claimants: Upon the Effective Date, all Qualified Claimants will be deemed to fully, finally and forever release the Released Parties from all Qualified Claimant's Released Claims. Qualified Claimant's acknowledge that they may hereafter discover facts or law different from, or in addition to, the facts or law they know or believe to exist with respect to a released claim. Qualified Claimant's nonetheless acknowledge that this Agreement and their releases shall be and shall remain effective in all respects notwithstanding such different or additional facts or law regarding such released claims. In addition, on the Effective Date, all Qualified Claimants and their successors in interest will be permanently enjoined and forever barred from prosecuting any of Qualified Claimant's Released Claims against any of the Released Parties or participating in any actions, lawsuits,

1 proceedings, complaints, or charges brought individually or by any other agency, persons, or entity in
2 any court or before any administrative body with regard to any of Qualified Claimant's Released
3 Claims. Nor will Settlement Class Members contest or interfere with efforts by Defendant or a Released
4 Party to oppose any attempt to bring or assert such released claims against Defendant or a Released
5 Party.

6 6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved
7 Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all
8 Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in
9 interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA
10 Claims against any of the Released Parties.

11 6.3 Release by Plaintiff: Upon the Effective Date, Plaintiff agrees to a general release pursuant
12 to California Civil Code Section 1542, in addition to releasing the Released Claims described above
13 against the Released Parties. Plaintiff releases any and all claims, obligations, demands, actions, rights,
14 causes of action, and liabilities against the Releasees, of whatever kind and nature, character, and
15 description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local law,
16 statute, ordinance, regulation, common law, or other source of law, whether known or unknown, and
17 whether anticipated or unanticipated, including unknown claims covered by Civil Code Section 1542, as
18 described in section 6.4, by the Plaintiff, arising during the period from the beginning of the Plaintiff's
19 employment with Defendant to the date the Court enters an order granting final approval of the Agreement,
20 for any type of relief, including, without limitation, claims for wages, damages, unpaid costs, penalties,
21 liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable
22 relief. The Plaintiff's Released Claims include, but are not limited to, the Released Claims, as well as any
23 other claims under any provision of the Fair Labor Standards Act, the California Labor Code, the
24 California Penal Code, or any applicable California Industrial Welfare Commission Wage Orders, and
25 claims under state or federal discrimination statutes, including, without limitation, the California Fair
26 Employment and Housing Act, California Government Code § 12940 *et seq.*; the Unruh Civil Rights Act,
27 California Civil Code § 51 *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964,
28 42 U.S.C. § 2000 *et seq.*; the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; the Employee

1 Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*; and all of their implementing
2 regulations and interpretive guidelines.

3 6.4 Plaintiff acknowledges the language of Section 1542 of the California Civil Code, which
4 provides:

5 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR
6 RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
7 FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM
8 OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH
9 THE DEBTOR OR RELEASED PARTY.

10 6.4.1 Plaintiff expressly waives the protection of Section 1542. Plaintiff understands and
11 agrees that claims or facts in addition to or different from those which are now known or believed by her
12 to exist may hereafter be discovered. It is Plaintiff's intention to settle fully and release all of the claims
13 he now has against the Released Parties, whether known or unknown, suspected or unsuspected.

14 7. SETTLEMENT ADMINISTRATION

15 7.1 Duties of Claims Administrator: The Claims Administrator shall be responsible for: 1)
16 receiving Class Member and Aggrieved Employee contact information and confirming addresses are
17 valid; 2) calculating estimated Claim Amounts and any and all taxes associated with the Claim Amounts,
18 including Employer taxes; 3) taking appropriate steps to trace and locate any individual Class Members
19 and Aggrieved Employee whose address or contact information as provided to the Claims Administrator
20 is inaccurate or outdated and mailing the Notice of Settlement to Class Members; 4) providing notification
21 to the appropriate state and federal officials of this Agreement as required under the law; 5) receiving,
22 independently reviewing, and resolving any challenges (in consultation with Class Counsel and
23 Defendant's Counsel) from Class Members or Aggrieved Employees, including any associated
24 documentation, regarding their Qualifying Workweek calculations; 6) receiving and serving on Class
25 Counsel, Defendant's Counsel, and the Court, copies of any written objections, and/or any opt out
26 statements; 7) establishing a toll free telephone line and webpage where documents filed in the Action are
27 accessible and responding to inquiries and requests for information or assistance from Class Members
28 and/or Aggrieved Employees; 8) maintaining a QSF; 9) determining and paying the final amounts due to

1 be paid under the Agreement after resolution of all challenges, disputes, opt-outs, awarded attorneys' fees
2 and costs, Claims Administrator Costs, PAGA Payment, taxes, and any Enhancement Payment; 10)
3 determining the validity of any disputes or late opt-outs by previously unidentified Class Members or
4 Aggrieved Employees; 11) reporting to Class Counsel and Defendant's Counsel regarding the statistics of
5 the administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of
6 forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of
7 total undeliverable Notice of Settlements; (e) the number of address traces performed for undeliverable
8 Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced addresses; (g)
9 the number of total objections received; (h) the number of opt-out requests received; (i) the number of
10 disputes received; (j) the number of disputes resolved; 12) providing a declaration to the Court regarding
11 the final statistics of the administration and compliance with all payment obligations under the Agreement;
12 13) completing all necessary tax reporting on the QSF and payment of the Claim Amounts to Qualified
13 Members and Aggrieved Employees; and 14) carrying out other related tasks as necessary to effectuate
14 the terms of this Agreement and any Order of the Court. All disputes relating to the Claims Administrator's
15 ability and need to perform its duties shall be referred to the Court, if necessary, which will have
16 continuing jurisdiction over the terms and conditions of this Agreement, until all payments and obligations
17 contemplated by the Agreement have been fully executed.

18 7.2 Notice to Class Members and Aggrieved Employees: The Notice of Settlement will provide
19 Class Members and Aggrieved Employees with a summary of the terms and conditions of the Agreement,
20 how to participate in the settlement, how to object to the Agreement, how to dispute the individual's
21 Qualifying Workweeks, and how to opt-out from the Agreement. The Notice of Settlement will also
22 inform Class Members and Aggrieved Employees of the Gross Settlement Amount, Net Settlement
23 Amount, proposed Attorneys' Fees and Costs allocations, any proposed Enhancement Payment, proposed
24 Claims Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the class and
25 aggrieved employee group, the nature and extent of the released claims, dates set for a fairness hearing
26 and hearing on Class Counsels' motion for Attorneys' Fees and Costs. The Notice of Settlement shall
27 include information regarding Class Member's and Aggrieved Employee's estimated Claim Amount. The
28 Notice of Settlement will provide information on how to access electronic copies online of the Notice of

1 Settlement, any motions for approval of the Agreement, any motions for approval of Attorneys' Fees and
2 Costs, and any other documents as the Court directs. Finally, the Notice of Settlement will inform Class
3 Members that any prior non-compete agreements they entered into with Defendant are void and
4 unenforceable.

5 7.3 Class Member Data and Mailing: No later than fourteen (14) calendar days after the
6 Preliminary Approval Date, Defendant shall provide the Claims Administrator with the name, last known
7 mailing address, last known telephone number, Social Security Number, of the number of Qualifying
8 Workweeks for each Class Member and Aggrieved Employee needed to calculate each Class Member and
9 Aggrieved Employee's estimated Claim Amount as set forth in Section 5.8, and any other information the
10 Claims Administrator needs to effectuate notice to Class Members and Aggrieved Employees as outlined
11 herein. The Claims Administrator shall review the data to determine the number of Qualifying Workweeks
12 for each Class Member and Aggrieved Employee. No later than fourteen (14) calendar days after receipt
13 of such address information, the Claims Administrator will perform a national change of address
14 ("NCOA") search, update the addresses per the results of the NCOA search, and then mail the Notice of
15 Settlement, substantially in the form attached as Exhibit 1, to each Class Member and Aggrieved
16 Employee by first-class mail, postage prepaid. The Claims Administrator shall maintain all information
17 received from Defendant confidential to itself, and Defendant's Counsel. However, Class Counsel shall
18 be able to review the breakdown of Qualified Workweeks and estimated Claim Amounts for Class
19 Members and Aggrieved Employees prior to mailing for quality assurance provided the personal
20 identifying information is redacted and/or omitted.

21 7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement
22 is returned to the Claims Administrator as undeliverable on or before the conclusion of the Notice Period,
23 the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5) calendar
24 days. If no forwarding address is provided, then the Claims Administrator shall promptly attempt to
25 determine a correct address using a skip-trace, computer or other search using the name, address and/or
26 Social Security number of the individual involved, and shall then perform a single re-mailing within five
27 (5) calendar days to any more recent address found as a result of the search. Following each search that
28 does not result in a corrected address, for those Class Members who appear to be current employees of

1 Defendant at the time of the Preliminary Approval Date, the Claims Administrator shall contact
2 Defendant's Counsel for assistance and Defendant shall cooperate in good faith with the Claims
3 Administrator's reasonable efforts to obtain valid mailing addresses for Class Members to the extent they
4 are active employees of Defendant or otherwise in contact with Defendant. In the event the Notice of
5 Settlement is forwarded to a new address and/or re-mailed to a Class Member, the deadline for the Class
6 Member to submit any request to opt-out, a dispute, or an objection shall be the end of the Notice Period
7 or 10 days from the date of the re-mailing/forwarding to a new address, whichever is later. In the event
8 the procedures in this Section are followed and the Class Member does not timely and properly request to
9 opt-out, the Class Member shall be bound by all terms of the Agreement, including the releases contained
10 in Section 6.

11 7.5 Responses to Notice of Settlement:

12 7.5.1 *Opt-Outs*: The Notice of Settlement shall provide that Class Members who wish to
13 exclude themselves from the Agreement must submit a request to opt-out as provided in this Section. The
14 request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that they
15 do not want to be a Class Member, do not want to participate in the settlement, and/or want to be excluded
16 from the settlement; (c) identify the case name and number (*i.e. Uribe v. EcoGuard Pest Management,*
17 *Inc.*, 34-2021-00300650); (d) be signed; and (e) be post-marked no later than the conclusion of the Notice
18 Period or the re-mailing timeline stated in Section 7.4. The Class Member must personally sign the request
19 to opt-out. No request to opt-out may be made on behalf of a group of Class Members. The date of the
20 postmark on the return-mailing envelope shall be the exclusive means used to determine whether a request
21 to opt-out has been timely submitted. Any Class Member who requests to opt-out of the Agreement will
22 not be entitled to any benefit of the Agreement or any portion of the Net Settlement Amount, will not be
23 bound by the Agreement, nor will they have any right to object, appeal or comment thereon. Class
24 Members who fail to submit a valid and timely request to opt-out shall be bound by all terms of the
25 Agreement and any order or final judgment thereon, regardless of whether they otherwise have requested
26 to opt-out of the Agreement. Aggrieved Employees cannot opt out of this Agreement as it relates to the
27 PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member.
28

1 7.5.2 *Objection Procedures:* Any Class Member who does not opt-out but who wishes
2 to object to this Agreement or otherwise to be heard concerning this Agreement shall send their written
3 objections to the Claims Administrator and also serve copies of the objections on Class Counsel and
4 Defendant's Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny
5 the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's
6 full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state
7 the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify
8 the case name and number (*i.e. Uribe v. EcoGuard Pest Management, Inc.*, 34-2021-00300650) (e) be
9 signed; and (f) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline
10 stated in Section 7.4. The objecting Class Member must also file a notice of intent to appear with the Court
11 and serve the notice on Class Counsel and Defendant's Counsel, if they intend to appear at the final
12 approval hearing.

13 7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying
14 Workweeks on the Notice of Settlement or application of formula set forth in Section 5.8 shall contact the
15 Claims Administrator. The dispute must (a) identify the nature of the dispute; (b) provide any information
16 or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than the conclusion
17 of the Notice Period or the re-mailing timeline stated in Section 7.4. The Claims Administrator shall
18 promptly (in no event more than two business days) forward all such disputes to Defendant's Counsel and
19 request that Defendant review the dispute. Defendant's records shall presumptively control unless the
20 Class Member can produce documentation evidencing other periods of employment worked. If Defendant
21 does agree with submitted information, the Class Member shall be credited or subtracted Qualifying
22 Workweeks in accordance with their submitted dispute and that final number of Qualifying Workweeks
23 shall govern the calculation of that Class Member's Claim Amount. If Defendant does not agree with the
24 submitted information, Defendant's Counsel will promptly advise Class Counsel of the dispute, which
25 includes turning over any documentation submitted by the Class Member as part of the dispute.
26 Defendant's Counsel and Class Counsel shall attempt in good faith to resolve any such dispute within five
27 (5) calendar days of Class Counsel being advised of the dispute. Each dispute that Defendant's Counsel
28

1 and Class Counsel cannot timely resolve shall be resolved by the Claims Administrator. The decision by
2 the Settlement Administrator shall be final and there shall be no right of appeal.

3 7.5.4 *Deficient Opt-Outs, Objections, or Disputes:* In the event that a deficient opt-out,
4 objection, or dispute is received on or before the conclusion of the Notice Period, the Claims Administrator
5 shall mail a letter to the Class Member within five (5) calendar days informing them of the deficiency. If
6 a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure the deficiency
7 shall be the end of the Notice Period or 10 calendar days from the date of the deficiency letter, whichever
8 is later.

9 7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1
10 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and
11 shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class
12 Counsel or Defendant's Counsel to provide notice of the proposed Agreement.

13 7.7 Claims Administrator Declaration Regarding Notice Period: Within fourteen (14) calendar
14 days after the conclusion of the Notice Period, the Claims Administrator shall provide Class Counsel and
15 Defendant's Counsel with a signed declaration under penalty of perjury providing a complete and detailed
16 report regarding the statistics and responses of settlement administration to date and all the Claims
17 Administrators' obligations under Sections 5.8 to 5.9.3 and 7.1 to 7.5.4.

18 7.8 Claims Administrator Payments to Qualified Claimants, Aggrieved Employees, Class
19 Counsel, and Plaintiff: Within seven (7) calendar days after the Effective Date and the Court's
20 determination of the amount of attorneys' fees and costs payable to Class Counsel, the Enhancement
21 Payment payable to Plaintiff, the PAGA Payment, and Claims Administrator Costs, the Claims
22 Administrator shall calculate the final Net Settlement Amount, the final Claim Amounts for Qualified
23 Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these
24 calculations Class Counsel and Defendant's Counsel. Defendant shall wire the Gross Settlement Amount
25 and applicable taxes necessary to fund the Settlement as described in Section 5.1 to the Claims
26 Administrator within twenty-one (21) calendar days after the Effective Date to be to be held in trust in a
27 QSF. Within seven (7) calendar days after Defendant funds the settlement, the Claims Administrator shall
28 deliver payment of Class Counsels' Attorney's Fees and Costs, the Enhancement Payment payable to

1 Plaintiff, the 75% portion of the PAGA Payment payable to the LWDA, Claims Administrator Costs, and
2 payment to Qualified Claimants and/or Aggrieved Employees as required under this Agreement and
3 approved by Court.

4 7.8.1 The Claims Administrator shall wire the Court-approved Attorneys' Fees and Costs
5 to Class Counsel unless another method is requested by Class Counsel. Class Counsel shall provide the
6 Claims Administrator with the pertinent taxpayer identification number and payment instructions after the
7 Final Approval Date.

8 7.8.2 The Claims Administrator shall send a check by mail for the Court-approved
9 Enhancement Payment to the Class Representative, care of Class Counsel unless another method is
10 requested by Class Counsel.

11 7.8.3 Only Qualified Claimants and Aggrieved Employees will receive their Claim
12 Amount.

13 7.8.4 The Claims Administrator shall remit and report the applicable portions of the
14 payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this
15 Agreement. Defendant agrees to reasonably cooperate with the Claims Administrator to the extent
16 necessary to determine the amount of the payroll tax payment required.

17 7.9 Settlement Check Expiration and Uncashed Checks: The Claims Administrator shall issue
18 Claim Amounts to Qualified Claimants and Aggrieved Employees in the form of a check. After one
19 hundred twenty (120) calendar days of issuance, the checks shall be voided and funds from all uncashed
20 checks shall be transmitted in accordance with Section 5.6. The Claims Administrator shall deliver these
21 funds within fourteen (14) calendar days after the check cashing deadline.

22 7.10 Claims Administrator Declaration Regarding Compliance and Settlement Administration:
23 Within twenty-one (21) days after the last day for Qualified Claimants and Aggrieved Employees to cash
24 their settlement checks, the Claims Administrator shall provide Class Counsel and Defendant's Counsel
25 with a signed declaration under penalty of perjury providing a complete and detailed report regarding the
26 settlement administration documenting that all payments under the Agreement have been made, that the
27 Court's final approval order has been complied with, and that all the obligations of the Claims
28 Administrator have been completed.

8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Class Members and Aggrieved Employees, and sets further hearings. The schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

Last day for Defendant to provide Claims Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
Last day for Claims Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Defendant
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
Last day for Defendant to fund settlement	Within 21 calendar days after the Effective Date

Last day for Claims Administrator to deliver payment of Class Counsel's Attorney's Fees and Costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 7 calendar days after Defendant funds the settlement
Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 calendar days after issuance of checks to Qualified Members and Aggrieved Employees
Last day for Claims Administrator to deliver value of uncashed settlement checks to the State of California Unclaimed Property Fund	Within 14 calendar days after settlement check cashing deadline
Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

9. DUTIES OF THE PARTIES

9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the Preliminary Approval Motion to Defendant's Counsel. Defendant's Counsel will provide comments and/or proposed revisions within one week after receipt of the draft Preliminary Approval Motion from Class Counsel. With regard to the final approval documents, a similar one-week maximum review and response time shall be observed by the Parties. The Parties will request that the Court's preliminary approval of this

1 Agreement be embodied in an Order Granting Preliminary Approval of Class Action and PAGA
2 Settlement.

3 9.1.1 Plaintiff's motion shall seek an order: 1) Preliminarily approving the Agreement; 2)
4 Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the
5 Notice of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily
6 appointing Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving
7 settlement administration services to be provided by the Claims Administrator; 6) Preliminarily approving
8 the proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment
9 of reasonable Attorneys' Fees and Costs to Class Counsel; and 8) Scheduling a fairness hearing on the
10 question of whether the proposed Agreement should be finally approved as fair, reasonable and adequate
11 as to the Class Members.

12 9.1.2 Defendant shall not oppose Plaintiff's motion for approval of the proposed
13 Agreement.

14 9.1.3 The Parties shall cooperate with each other and the Claims Administrator during
15 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and
16 appropriate to assure effective communication to individual Class Members of information about their
17 rights and obligations under this Agreement.

18 9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the
19 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if
20 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the
21 Agreement, a declaration by the Claims Administrator of due diligence and proof of mailing of the Notice
22 of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results of
23 the Claim Administrator's mailings including tracing and re-mailing efforts.

24 9.2.1 Class Counsel will submit a proposed order and judgment for final approval, which
25 shall include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair,
26 reasonable and adequate, and directing that its terms and provisions be carried out; 2) Approving the
27 payment of an Enhancement Payment to the Class Representative; 3) Approving Class Counsel's
28 application for an award of Attorneys' Fees and Costs; 4) Approving the Claims Administrator Costs; and

1 5) Providing that the Court will retain jurisdiction to oversee administration and enforcement of the terms
2 of the Agreement and the Court's orders.

3 9.2.2 Following entry of the Court's Order granting final approval of the Agreement, the
4 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the
5 following: 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside
6 the judgement be filed, all Parties will support the final approval order on appeal or otherwise; 2) Class
7 Counsel will assist the Claims Administrator as needed or requested in the process of identifying and
8 locating Qualified Claimants and Aggrieved Employees entitled to payments under the Agreement and
9 assuring delivery of such payments; 3) Class Counsel and Defendant's Counsel will cooperate with each
10 other and assist the Claims Administrator as needed or requested in completing the distribution of any
11 unclaimed amounts, as specified above, to the State of California Unclaimed Property Fund; 4) Class
12 Counsel, in conjunction with the Claims Administrator, will certify to the Court completion of all
13 payments required to be made by this Agreement.

14 9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness
15 hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action
16 and PAGA Settlement and Final Judgment.

17 9.4 Notice to LWDA: Plaintiff will provide notice to the Labor and Workforce Development
18 Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(1)(2).

19 **10. MISCELLANEOUS TERMS**

20 10.1 Workweeks: Defendant has represented that there are no more than approximately 9,099
21 workweeks during the Class Period as of the date of the Parties' mediation. In the event the number of
22 workweeks during the Class Period is more than 10,009 (*i.e.*, greater than 10% more than 9,099), then
23 the Gross Settlement Amount shall be increased proportionally by the workweeks in excess of 9,099,
24 multiplied by the pay period value. For example, if there were 11,900 workweeks represented to exist
25 during the Class Period, but there are actually 15,000 workweeks in the Class Period, and the actual
26 workweek value is \$5.00 per workweek, Defendant would have to increase the Gross Settlement
27 Amount by \$15,500.00 (15,000 workweeks – 11,900 workweeks = 3,100 workweeks x
28 \$5.00/workweek).

1 10.2 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
2 THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT
3 OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND
4 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
5 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
6 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
7 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
8 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
9 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
10 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
11 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
12 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
13 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
14 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
15 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY
16 TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
17 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
18 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX
19 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
20 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
21 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
22 BY THIS AGREEMENT.

23 10.3 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
24 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
25 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
26 and discharged in this Agreement.

27 10.4 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
28 signing this Agreement, Defendant is waiving any rights to appeal from the Court’s approval of the

1 Settlement unless the Court materially modifies the Settlement. Furthermore, by signing this Agreement,
2 Plaintiff is waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

3 10.5 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
4 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
5 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

6 10.6 Judgment and Retention of Jurisdiction to Enforce: Upon the Effective Date, judgment will
7 be entered according to this Agreement. The Parties stipulate and agree that the Sacramento County
8 Superior Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil
9 Procedure Code section 664.6 and that the prevailing party any action necessary to enforce the terms of
10 the Agreement after default by the other party may recover reasonable attorney's fees and costs related
11 thereto.

12 10.7 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
13 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to,
14 execution of such other documents and the taking of such other action as may reasonably be necessary to
15 fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all
16 efforts contemplated by this Agreement and any other efforts that may become necessary by Court order,
17 or otherwise, to effectuate this Agreement and the terms set forth herein.

18 10.8 No Admission of Liability: Neither the acceptance nor the performance by Defendant of
19 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
20 be, construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in the
21 Complaint, the representative character of the Action, the validity of any of the claims that were or could
22 have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of
23 Defendant in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
24 Defendant of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members,
25 the Aggrieved Employees or any other person, and Defendant specifically disclaims any liability,
26 culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, the Aggrieved Employees or
27 any other person. Each of the Parties has entered into this Stipulation with the intention to avoid further
28 disputes and litigation.

1 10.9 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
2 communications given hereunder shall be in writing and shall be deemed to have been duly given as of
3 the third business day after mailing by United States certified mail, return receipt requested, addressed as
4 follows:

5 To Plaintiff and the Class:

6 Galen T. Shimoda
7 Justin P. Rodriguez
8 Brittany V. Berzin
9 Shimoda & Rodriguez Law, PC
10 9401 East Stockton Blvd., Suite 120
11 Elk Grove, CA 95624

12 To Defendant:

13 Coby M. Turner
14 Phillip J. Ebsworth
15 Seyfarth Shaw LLP
16 400 Capitol Mall, Suite 2350
17 Sacramento, California 95814
18 Telephone: (916) 448-0159
19 Facsimile: (916) 558-4839

20 10.10 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of
21 this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that
22 this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
23 party or its counsel participated in the drafting of this Agreement.

24 10.11 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys
25 acting for, or purporting to act for, the Class, Class Members, Aggrieved Employees or Plaintiff, may
26 recover or seek to recover any amounts for fees, costs, or disbursements from the Releasees or the Gross
27 Settlement Amount except as expressly provided in this Agreement.

28 10.12 No Modifications: This Agreement may be amended or modified only by a written
instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be
discharged except by performance in accordance with its terms.

 10.13 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and
represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement
and to take all appropriate action required or permitted to be taken by such Parties pursuant to this

1 Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of
2 this Agreement.

3 10.14 Class Member Signatories: Because the Action has not yet been certified, and the Class
4 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member
5 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement
6 may be executed on behalf of all Class Members by the Class Representative.

7 10.15 Counterparts: This Agreement shall become effective upon its execution by all of the
8 undersigned. Plaintiff, Class Counsel, Defendant and Defendant's Counsel may execute this Agreement
9 in counterparts, and execution of counterparts shall have the same force and effect as if each had signed
10 the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force
11 and effect of originals.

12 10.16 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
13 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and
14 the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance
15 with, and governed by, the substantive laws of the State of California without giving effect to that State's
16 choice of law principles.

17 10.17 Headings and Captions: Section titles or captions contained in the Agreement are inserted
18 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
19 this Agreement, or any provision thereof.

20 10.18 No Retaliation or Discouragement: The Parties agree they will take no action that could be
21 construed as retaliation against any Class Members for participating or seeking to participate in this class
22 action settlement. The Parties will not discourage any class member from participating or seeking to
23 participate in this class action settlement. This is a material term of the Agreement and non-breaching
24 Parties will seek court intervention if this provision is breached. Should non-breaching Party prevail, they
25 shall be entitled to further attorneys' fees and costs.

26 10.19 Integrated Agreement: This Agreement sets forth the entire understanding between the
27 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
28 Each party acknowledges that there is no representation, inducement, promise or agreement which has

1 been made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement,
2 which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent
3 that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

4 10.20 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to
5 the benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

6 10.21 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
7 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
8 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

9 10.22 Waiver of Compliance: No waiver of any condition or covenant contained in this
10 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
11 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

12 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
13 attorneys, as of the day and year herein set forth.

14 **For Plaintiff:**

15 Date: 6/21/2022

DocuSigned by:
Michael Uribe
F208E3383B9245C...

Michael Uribe

17
18 **For Defendant:**

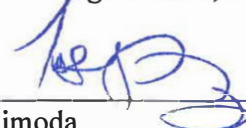
19 Date: _____

20 By: _____
21 For EcoGuard Pest Management, Inc.

22
23
24 APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

25 Dated: 06/23/2022

26 By: 
27 Galen T. Shimoda
28 Justin P. Rodriguez
Brittany V. Berzin
Attorney for Plaintiff and Aggrieved
Employees

1 been made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement,
2 which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent
3 that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

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7 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
8 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

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10 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
11 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

12 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
13 attorneys, as of the day and year herein set forth.

14 **For Plaintiff:**

15 Date: _____

16 _____
Michael Uribe

17
18 **For Defendant:**

19 Date: 6/20/22

20 By: 
For EcoGuard Pest Management, Inc.

21
22
23
24 APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

25
26 Dated: _____

27 By: _____
Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorney for Plaintiff and Aggrieved
28 Employees

1 APPROVED AS TO FORM

SEYFARTH SHAW LLP

2
3
4 Dated: 6/20/22

By: 

Coby M. Turner
Phillip J. Ebsworth
Attorney for Defendant

Exhibit 1

CALIFORNIA SUPERIOR COURT

FOR THE COUNTY OF SACRAMENTO

MICHAEL URIBE, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

ECOGUARD PEST MANAGEMENT, INC., a
California Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 34-2021-00300650

CLASS ACTION

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

ATTENTION: all non-exempt employees who have worked, or continue to work, for Defendant EcoGuard Pest Management, Inc. in California from May 12, 2017, to [REDACTED] (the “Class Members”), and/or from April 28, 2020, to [REDACTED] (the “Aggrieved Employees”).

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

Pursuant to an order from the Sacramento County Superior Court (“Court”) granting preliminary approval of this class action settlement, entered on [REDACTED], you are receiving notice of a proposed class action and Private Attorneys General Act (“PAGA”) settlement between Plaintiff Michael Uribe (“Plaintiff” or “Class Representative”), and Defendant EcoGuard Pest Management, Inc. (“EcoGuard”) on behalf of Class Members as defined above. You are receiving this notice because EcoGuard’s records indicate you fall within the definition of “Class Member.” EcoGuard’s records also indicate that you worked [REDACTED] weeks during the applicable Class Period (as defined below), which means your share of the settlement proceeds is estimated to be [REDACTED], and your share of the PAGA payment is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on whether any Class Members opt out of participation in the settlement, and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court’s order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On May 12, 2021, Plaintiff filed a Complaint against EcoGuard in the Sacramento County Superior Court of California on behalf of himself and Class Members and Aggrieved Employees. The term “Action” means this putative class and representative action pending in Sacramento County Superior Court, Case No. 34-2021-00300650. The Class Period is May 12, 2017, to [REDACTED] (the “Class Period”), and the PAGA Period is April 28, 2020, to [REDACTED] (the “PAGA Period”).

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself, Class Members, and Aggrieved Employees. Plaintiff alleged that EcoGuard violated California law by 1) failing to pay Plaintiff,

Class Members, and Aggrieved Employees for all hours worked; 2) failing to pay the correct regular rates of pay due to failing to account for the value of commissions, bonuses, and different rates of pay being paid within the same workweek; 3) failing to authorize and permit all meal and rest periods and failing to keep track of whether employees took meal periods; 4) failing to reimburse employees for the use of personal items for work, such as personal cellphones, car washes, and laundering their uniforms; 5) failing to include the correct hourly rates and gross and net wages on wage statements issued to employees; 6) requiring employees to enter into agreements with illegal terms; 7) failing to pay all paid sick time; and 8) failing to notify employees that calls made from the RingCentral app were being recorded. EcoGuard has denied all of Plaintiff's allegations. 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 a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. EcoGuard vigorously denies all allegations of wrongdoing whatsoever and has entered into this settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden, expense, uncertainty, and distraction associated with ongoing litigation.

The Parties have entered into a Joint Stipulation of Regarding Class Action PAGA Settlement and Release ("Agreement"), which has been preliminarily approved by the Court. The Agreement applies to any and all Class Members and/or Aggrieved Employees as defined above. "Class Member" does not include persons who submit a valid request to opt out (as explained below). If you are a Class Member, you have the opportunity to participate in the settlement, or to exclude yourself ("opt out") from the settlement. This notice is to advise you of how you can either participate in the settlement or be excluded from the settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, EcoGuard has agreed to pay a total sum of Three Hundred Ten Thousand Dollars (\$310,000) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums, if approved by the Court, for attorneys' fees not to exceed 35% of the Gross Settlement Amount (which equals \$108,500), attorneys' costs not to exceed \$7,500, Claims Administrator Costs estimated not to exceed \$10,000, Class Representative's Enhancement Payment of \$15,000, and \$10,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer taxes attributable to payments allocated as wages will be paid by EcoGuard in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$10,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees, defined above.

The number of weeks you worked during the Class Period and your estimated share of the Net Settlement Amount and PAGA Payment ("Claim Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by participating Class Members, the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claims.

B. CLAIM AMOUNTS AND ALLOCATION BETWEEN CLASS MEMBERS AND AGGRIEVED EMPLOYEES

EcoGuard will pay Claim Amounts through the Claims Administrator, as described below, to each Class Member who does not opt out of the settlement and to Aggrieved Employees. All Claim Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Claim Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as two-thirds for disputed interest, statutory penalties, civil penalties and other non-wage damages for which IRS Forms 1099-MISC and 1099-INT will issue and one-third for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Class Members who do not opt out and Aggrieved Employees will not require the submission of a claim form. Each Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment

will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. Receipt of the Claim Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on EcoGuard's Records and Resolution of Workweek Disputes

For each Class Member and Aggrieved Employee, the amount payable will be calculated by the Claims Administrator from EcoGuard's records. EcoGuard's records will be presumed correct unless evidence to the contrary is provided to the Claims Administrator. EcoGuard's 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 or Aggrieved Employee. If a Class Member or Aggrieved Employee disputes the accuracy of EcoGuard's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member or Aggrieved Employee. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than [REDACTED]. The dispute will be resolved by the Claims Administrator based on the records and evidence provided. The Claims Administrator's decision on all disputes will be final and binding.

D. Non-Compete Agreements Void

As part of the settlement, EcoGuard has agreed that any prior non-compete agreements it entered into with Class Members and Aggrieved Employees are void and unenforceable.

E. Release of Claims

For those Class Members who do not opt out and all Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released any and all claims contained in the operative Complaint and any additional wage and hour claims, whether known or unknown, that were or could have been brought based on the facts alleged in any version of the complaints filed in this matter arising during the period from May 12, 2017, through May 2, 2022. The claims released by the Class Members include, but are not limited to, statutory, constitutional, contractual, penal code, or common law claims for wages, damages, unpaid costs or expenses, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief, regardless of the forum in which they may be brought, to the fullest extent such claims are releasable by law, for all claims arising out of or based upon the allegations in the Complaint(s), including: (a) for failure to properly pay minimum or overtime wages; (b) for failure to provide meal periods or pay premiums in lieu thereof; (c) for failure to provide rest periods or pay premiums in lieu thereof; (d) for failure to pay or provide wages, penalties, premiums, or other compensation at the proper rate of pay; (e) for recordkeeping or wage statement violations; (f) for failure to timely pay wages upon separation and all waiting time penalties; (g) for failure to reimburse employees for business expenses; (h) for unlawfully recording or recording individuals' conversations without consent, whether under the California Penal Code, in violation of California's right to privacy, or otherwise; (i) for having employees enter into an illegal contract; (j) for unlawful deductions from pay; and (k) for failure to provide or pay for sick time; and (m) any and all other claims that could have been alleged based on the facts alleged in the Complaint(s) in the action. The released claims include, without limitation, claims meeting the above definition(s) under any and all applicable statutes, including without limitation any provision of the Fair Labor Standards Act; California Labor Code; California Penal Code; and California Bus. & Prof. Code §§ 17200 *et seq.* based on the facts or claims alleged in the Complaint(s) in the action; and any provision of the applicable California Industrial Welfare Commission Wage Orders based on the facts alleged in the Complaint(s) in the action.

Aggrieved Employees will be deemed to have released all Private Attorneys General Act claims for civil penalties contained in the operative Complaint or that could have been raised in the operative Complaint based on the allegations set forth therein, through the PAGA Claim Period. Aggrieved Employees cannot opt out of this Release of Claims.

The individuals released ("Released Parties") include EcoGuard, as well as EcoGuard's owners, officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members and Aggrieved Employees can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if they have questions about the released claims and what they mean.

F. ATTORNEYS' FEES AND COSTS

Class Members and Aggrieved Employees do not need to pay individually any portion of Class Counsel's attorneys' fees and costs. Any payments for those attorneys' fees and costs must be approved by the Court and will be deducted from the Gross Settlement Amount. Class counsel intends to request up to a maximum of 35% of the Gross Settlement Amount (which equals \$108,500), and attorneys' costs not to exceed \$7,500.

G. REASONABLENESS OF SETTLEMENT

The Parties agree that the Settlement is fair, reasonable, and adequate as to all Class Members and Aggrieved Employees and should be given final approval by the Court.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. PARTICIPATING IN THE SETTLEMENT

If you wish to participate in the settlement and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on participating in the Settlement.

B. 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. THE REQUEST TO OPT-OUT MUST (A) STATE YOUR FULL NAME AND DATE OF BIRTH; (B) A STATEMENT THAT YOU DO NOT WANT TO BE A CLASS MEMBER, DO NOT WANT TO PARTICIPATE IN THE SETTLEMENT, AND/OR WANTS TO BE EXCLUDED FROM THIS SETTLEMENT; (C) IDENTIFY THE CASE NAME AND NUMBER (*I.E.*, URIBE V. ECOGUARD PEST MANAGEMENT, INC., 34-2021-00300650); (D) BE SIGNED; AND (E) BE POST-MARKED NO LATER THAN [REDACTED]. THE REQUEST TO OPT OUT MUST BE SIGNED, DATED AND MAILED BY FIRST CLASS U.S. MAIL OR THE EQUIVALENT, TO:

[admin info]

The request to opt out must be postmarked no later than [REDACTED]. If you submit a request to opt out which is not postmarked by [REDACTED], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. If the request to opt out 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 to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Claims Administrator, no longer be a Class Member and not receive their share of the class settlement payment. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. OBJECTION TO SETTLEMENT

If you do not opt out of the settlement, you can object to the terms of the Agreement. However, if the Court rejects your objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s); (d) identify the case name and number (*i.e.* *Uribe v. EcoGuard Pest Management, Inc.*, 34-2021-00300650) (e) be signed; and (f) be post-marked no later than [REDACTED]. The objection must be sent to the Claims Administrator at the address identified in section III.B and to counsel for Plaintiff and EcoGuard at the addresses identified in section IV of this notice.

If you have submitted a written objection as outlined above, you may also appear at the Final Approval Hearing, either in person or through your own attorney, to state your objection. The Parties request that you file a notice of intent to appear with the Court

and contact Class Counsel and EcoGuard's Counsel to inform them of your intent to appear at the Final Approval Hearing. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

After final approval of the settlement has been granted by the Court, each and every Class Member who does not opt out of the settlement and Aggrieved Employee, will release EcoGuard and the Released Parties from the released claims described above. In other words, if you were employed as a Class Member by EcoGuard in California during the Class Period and you do not exclude yourself from the settlement, or you were an Aggrieved Employee during the PAGA Period, you will be deemed to have entered into this release and to have released the above-described claims. In addition, you will be barred from ever suing EcoGuard and the Released Parties with respect to the 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 ___, [address] on [] at [] to determine whether the Agreement 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, approve the PAGA Payment, and approve the Class Representative's Enhancement Payment. The hearing may be continued without further notice to Class Members or Aggrieved Employees. It is not necessary for you to appear at this hearing, and if you submit anything to the Court in writing, it will be considered even if you do not make an appearance.

VI. ADDITIONAL INFORMATION

If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel or EcoGuard's Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Coby M. Turner
Phillip J. Ebsworth
Seyfarth Shaw LLP
400 Capitol Mall, Suite 2350
Sacramento, California 95814-4428
Tel: (916) 448-0159
Fax: (916) 558-4839
***On behalf of Defendant EcoGuard Pest
Management, Inc.***

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

EXHIBIT B

FILED
Superior Court Of California,
Sacramento
08/31/2021
reanmiguel
By _____, Deputy
Case Number:
34-2021-00300650

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda Law Corp.
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff MICHAEL URIBE

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

MICHAEL URIBE, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

ECOGUARD PEST MANAGEMENT, INC.,
a California Corporation; and
DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2021-00300650

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Meal Period Violations
3. Rest Period Violations
4. Wage Statement Violations
5. Waiting Time Penalties
6. Failure to Reimburse Expenses
7. Unfair Competition
8. Violation of Right to Privacy
9. Private Attorneys General Act

DEMAND FOR JURY TRIAL

1 Plaintiff MICHAEL URIBE ("Plaintiff"), on behalf of himself and all other similarly situated
2 employees, hereby files this Complaint against Defendants ECOGUARD PEST MANAGEMENT,
3 INC., a California Corporation; and DOES 1 to 100, inclusive (hereinafter all collectively referred to
4 as "Defendants"). On information and belief, Plaintiff alleges the following:

5 INTRODUCTION

6 1. This is a class action and Private Attorneys General Act ("PAGA") representative lawsuit
7 brought by Plaintiff for failure to pay overtime, meal and rest period violations, wage statement
8 violations, failure to pay final wages, failure to reimburse expenses, unfair competition, and right to
9 privacy violations.

10 JURISDICTION AND VENUE

11 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
12 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
13 Labor Code, California Business and Professions Code, and Wage Order No. 5.

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

18 4. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the
19 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of himself
20 and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written
21 notice via online submission to the Labor and Workforce Development Agency ("LWDA") on
22 approximately April 28, 2021. Plaintiff provided facts and legal bases for his claims within the notice to
23 the LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiff
24 submitted the \$75.00 filing fee. The April 28, 2021 notice was also sent via certified mail to Defendants
25 on the same day. Plaintiff is informed and believes, that to date, the LWDA has not provided any
26 response to Plaintiff's notice correspondence. Accordingly, Plaintiff is informed and believes that he
27 has exhausted all administrative remedies pursuant to the Private Attorneys General Act and may bring
28 this action on behalf of himself and all similarly situated employees. *See* Cal. Labor Code §

2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19 (2005).

PARTIES

5. MICHAEL URIBE is an individual over the age of eighteen (18) and is a resident of the State of California.

6. On information and belief, Plaintiff alleges, ECOGUARD PEST MANAGEMENT, INC., is now and/or at all times mentioned in this Complaint was a California Corporation and the owner and operator of an industry, business and/or facility doing business in the State of California.

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

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

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

10. 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.

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

//

//

1 **CLASS ALLEGATIONS**

2 12. Plaintiff brings the First through Eighth Causes of Action on behalf of himself and all
3 others similarly situated as a class action pursuant to California Code of Civil Procedure section 382.

4 The class which Plaintiff seeks to represent is composed of, and defined, as follows:

5 all of Defendants' non-exempt employees who have worked, or continue
6 to work, for Defendants in California from May 12, 2017 to the present.

7 all of Defendants' non-exempt employees who have worked, or continue
8 to work, for Defendants in California whose calls were recorded by
9 Defendants through the use of the RingCentral app during calls initiated
10 by Defendants by and through their employees from May 12, 2020 to the
11 present.

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

15 (a) Numerosity: The putative class is so numerous that the individual joinder of all members
16 is impracticable under the circumstances of this case. While the exact number of class
17 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that
18 Defendants have employed as many as fifty (50) individuals falling within the above
19 stated class definition throughout the State of California during the applicable statute of
20 limitations, who were subjected to the policies and practices outlined in this Complaint.
21 As such, joinder of all members of the putative class is not practicable.

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

- 26 (1) Whether Defendants had a policy or practice to incorporate the value of bonuses
27 and other nondiscretionary remuneration into Plaintiff's and putative class
28 members' regular rates of pay;
- (2) Whether Defendants failed to pay all overtime wages as a result of their failure to
correctly calculate Plaintiff's and putative class members' regular rates of pay;

- (3) Whether Defendants failed to pay all sick time as a result of their failure to correctly calculate Plaintiff's and putative class members' regular rates of pay;
 - (4) Whether Defendants failed to provide paid sick time in accordance with Labor Code 246, which provides that employers must provide employees with at least 24 hours of accrued paid sick time by employees' 120th day of employment;
 - (5) Whether Defendants failed to authorize Plaintiff and putative class members to take all meal periods;
 - (6) Whether Defendants failed to authorize Plaintiff and putative class members to take all rest periods;
 - (7) Whether Defendants failed to reimburse Plaintiff and putative class members for expenses incurred for the use of their personal cellphones, car washes for Defendants' vehicles and laundering uniforms;
 - (8) Whether Defendants secretly recorded Plaintiff's and putative class members phone calls;
 - (9) Whether as a result of Defendants' policies and practices Plaintiff's and putative class members received all wages, due and owing, at the time of their termination or separation; and
 - (10) Whether Defendants provided Plaintiff's and putative class members with wage statements that complied with Labor Code section 226.
- (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative class. The putative class also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Plaintiff and all members of the putative class did not receive all wages owed to them as a result of Defendants failure to accurately calculate regular rates of pay to include all nondiscretionary remuneration, did not receive legally compliant meal and rest periods, were not reimbursed for work expenses incurred, were not paid all final wages owed upon termination or separation, and had their phones conversations secretly recorded. Additionally, Defendants issued Plaintiff and all members of the putative class wage

1 statements that did not comply with Labor Code section 226. As a result, Plaintiff and
2 each member of the putative class will have suffered the same type of harm and seek the
3 same type of recovery based on the same legal theories.

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

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

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

24 GENERAL ALLEGATIONS

25 15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully
26 set forth herein.

27 //

28 //

1 16. Plaintiff worked for Defendants, a pest control company, from approximately July 8,
2 2020 to February 23, 2021. Plaintiff traveled between multiple of Defendants' customer's homes each
3 day performing pest control services or pest elimination.

4 17. Defendants paid Plaintiff and similarly situated employees an hourly rate in addition to
5 bonuses, commissions, and other nondiscretionary remuneration. However, Defendants failed to
6 incorporate the value of these bonuses, commissions, and other nondiscretionary remuneration into
7 Plaintiff's and similarly situated employees' regular rates of pay for the purpose of paying overtime
8 wages and paid sick time. For example, during Defendants' 9/14/20 to 9/27/20 pay period, Defendants'
9 paystub reflects that Defendants paid Plaintiff a flat sum bonus of \$250 and that he worked 30.95
10 overtime hours and 1.5 double time hours. Defendants paid Plaintiff's overtime wages at exactly 1.5x
11 his base hourly rate and his double time wages at exactly 2x his base hourly rate, which does not include
12 any adjustment for the value of the \$250 flat sum bonus. This resulted in unpaid overtime and unpaid
13 sick leave for Plaintiff and similarly situated employees.

14 18. Defendants did not authorize and permit Plaintiff and similarly situated employees to take
15 all meal and rest periods owed to them. Defendants scheduled Plaintiff and similarly situated employees
16 for back-to-back pest control appointments without providing any breaks in the schedule to take meal
17 and rest periods. Defendants required Plaintiff and similarly situated employees to clock out for lunch
18 even on occasions when they did not receive an uninterrupted full thirty (30) minute meal period.
19 Additionally, Defendants did not have any policy for employees to take a second lunch or third rest
20 break when they worked shifts longer than ten (10) hours. Additionally, Defendants did not have any
21 policy for employees to take a second lunch when working longer than ten (10) hours or a rest break for
22 every four (4) hours or major fraction thereof. Defendants' policies stated employees were only
23 authorized to take one 30-minute meal period if they worked longer than five (5) hours in a workday and
24 that employees were authorized for up to two rest periods a day, one (1) for every four hours (not every
25 four (4) hours or major fraction thereof).

26 19. Defendants required Plaintiff and similarly situated employees to enter into employment
27 contracts that included illegal terms of employment. For instance, Defendants required Plaintiff and
28 similarly situated employees to agree not to compete with Defendants even after their employment

1 ended and agree to offsets and deductions against wages for unreturned property at the time of
2 termination or separation, for paying fines, or for paying other assessments without regard for whether
3 they were caused by a dishonest or willful act, or by the gross negligence of the employee. Defendants
4 knew these terms were illegal as California law clearly prohibits noncompete agreements, offsets against
5 final wages, and charges against the employee in the absence of a dishonest or willful act or gross
6 negligence.

7 20. Defendants paid sick time policy did not provide Plaintiff and similarly situated
8 employees with at least 24 hours of accrued sick time by their 120th day of employment. For example,
9 Plaintiff's first day of employment was 7/8/20. 120 days after 7/8/20 is 11/5/20. Defendants did not
10 provide Plaintiff with a full 24 hours of paid sick time until his 12/21/20 to 1/3/21 pay period.

11 21. Defendants required Plaintiff and similarly situated employees to incur expenses for work
12 without paying reimbursement for such expenses. For instance, Defendants required Plaintiff and
13 similarly situated employees to use their personal cellphones for work, pay for car washes for
14 Defendants' vehicles and pay to launder uniforms provided by Defendants. Plaintiff and similarly
15 situated employees were specifically told that any company credit card was not for paying for car
16 washes and that employees were expected to cover that cost. Additionally, Plaintiff and similarly
17 situated employees were told they should use their personal cell phone to run company required
18 applications because the available company tablets would regularly be unresponsive or experience
19 substantial delays in running the pest route application that would cause employees to be substantially
20 late to their next scheduled appointments. Defendants did not reimburse Plaintiff or similarly situated
21 employees for these expenses.

22 22. Defendants required Plaintiff and similarly situated employees to download an app onto
23 their personal cellphones called RingCentral. Defendants required Plaintiff and similarly situated
24 employees to use this app to keep track of their time and to contact Defendants' customers. No
25 notifications about the calls being recorded were given when the calls were outgoing to customers.
26 Defendants used the RingCentral app to secretly record Plaintiff's and putative class members' calls.
27 Defendants did not inform Plaintiff, its employees, or its customers that such calls were being recorded.
28 Plaintiff and Defendants' employees used their personal cellphones to make these calls.

1 23. Defendants failed to provide Plaintiff and similarly situated employees with accurate
2 wage statements. The wage statements Defendants provided did not accurately itemize employees'
3 gross and net wages, meal and rest period premiums, and all applicable hourly rates in effect during the
4 pay period and the corresponding number of hours worked at each hourly rate.

5 24. At the time of Plaintiff's and similarly situated employees' termination or separation,
6 Plaintiff and similarly situated employees had overtime, sick time, and meal and rest period premiums
7 owing to them. As of the date of this letter, Defendants have not paid Plaintiff and similarly situated
8 employees these wages they are owed.

9 **CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**
11 **FAILURE TO PAY OVERTIME WAGES**
12 **(As to all Defendants)**

13 25. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 24 as though fully
14 set forth herein.

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

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

24 28. Plaintiff and similarly situated employees were not exempt from overtime protections
25 employees under the California Wage Orders and Labor Code.

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

//

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

30. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 29 as though fully set forth herein.

31. 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.

32. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 5, section 11(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.

33. California Labor Code section 512 and Wage Order No. 5 section 11(B) further provide that employers may not employ employees for a work period for 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.

34. 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.

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

36. 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.

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

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

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

39. California Labor Code section 226.7 and Wage Order No. 5, section 12(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.

40. 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.

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

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
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

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

44. 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 identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

45. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period, all overtime and double time hours worked and corresponding rates of pay, and gross and net wages earned. Plaintiff and similarly situated employees were not able to promptly and easily determine whether they were paid correctly from their paystubs alone. Additionally, Plaintiff and similarly situated employees suffered confusion over whether they received all wages owed and were prevented from effectively challenging information on their wage statements.

46. 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
WAITING TIME PENALTIES
(As to all Defendants)

47. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 46 as though fully set forth herein.

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

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

//

50. Plaintiff and similarly situated employees did not receive all wages, including 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.

51. 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.

52. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees' their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff and similarly situated employees were being paid bonuses and overtime and paid sick time without being paid the correct regular rate of pay. 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.

53. 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.

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

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

55. 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.”

56. Defendants required Plaintiff and similarly situated employees to use their personal phones, get Defendants' cars washed, and launder uniforms but failed to reimburse them for such expenses.

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57. 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.

SEVENTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to ECOGUARD PEST MANAGEMENT, INC. and DOES 1 to 100)

58. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 57 as though fully set forth herein.

59. 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.

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

61. 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).

62. 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, 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.

EIGHTH CAUSE OF ACTION
VIOLATION OF RIGHT TO PRIVACY
(As to ECOGUARD PEST MANAGEMENT, INC. and DOES 1 to 100)

63. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 62 as though fully set forth herein.

11

11

1 64. California Penal Code section 630 *et seq.* provides that it is illegal to eavesdrop (monitor)
2 and record telephonic communications or to record without consent cell phone communications. *See*
3 California Penal Code §§ 632, 632.7, 637.2.

4 65. Defendants used the RingCentral app to secretly record phone conversations between its
5 employees and its customers. Defendants' recording of these conversations was intentional as
6 Defendants utilized these recordings to monitor phone conversations between its employees and
7 customers. Plaintiff and putative class members reasonably expected their phone conversations to be
8 private as Plaintiff and Defendants' employees used their personal cellphones to contact Defendants'
9 customers and Plaintiff and putative class members were not informed that the calls were being
10 monitored or recorded. Plaintiff and putative class members did not consent to Defendants recording
11 their calls.

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

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

17 67. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 66 as though fully
18 set forth herein.

19 68. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
20 following provisions of the Labor Code in their dealings with him and other similarly situated current
21 and former employees:

- 22 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, § 3 (Failure to Pay
23 Overtime Wages)
- 24 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage
25 Statements)
- 26 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- 27 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
28 Work in Any Industrial Welfare Commission Order)

- Violation of Labor Code §§ 226.7, 512; IWC Wage Order 5, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7; IWC Wage Order 5, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- Violation of Labor Code § 432.5 (Requiring Agreement In Writing to Illegal Employment Terms)
- Violation of Labor Code §§ 221, 223, 225 (Failure to Pay Contract Wages and Unlawful Deductions)

69. Plaintiff seeks civil penalties against Defendants as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

70. Plaintiff seeks these civil penalties from Defendants pursuant to Labor Code sections 2699(a) and 2699.3.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

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. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
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. 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);

6. As to the Sixth Cause of Action:

a. An amount to be proven at trial;

b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

7. As to the Eighth Cause of Action:

a. An amount to be proven at trial;

b. The greater of five thousand dollars (\$5,000.00) per violation or three times the amount of actual damages sustained;

8. As to the Ninth Cause of Action:

a. For civil penalties as provided for in the Labor Code for each enumerated violation in an amount proven at trial;

b. For those Labor Code sections, the violation of which there is no civil penalty provided, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;

c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;

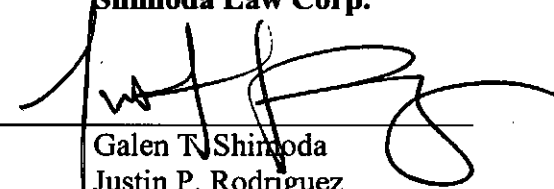
d. For any other remedies as allowed by law and/or deemed appropriate by the Court;

- 1 9. For such other and further relief as this Court may deem just and proper,
2 including, but not limited to:
3 a. Wages as proved at trial;
4 b. Injunctive and Declaratory relief;
5 c. Attorney's fees and costs as provided for by law; and
6 d. Interest.

7
8 Dated: August 27, 2021

Shimoda Law Corp.

9
10 By: _____


Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff

Uribe v Ecoguard Pest Management, Inc.
Sacramento County Superior Court of California 34-2021-00300650

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

I, Erika F. Collazo, declare that:

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

On August 30, 2021, I served the following documents on the party below:

- First Amended Complaint for Damages

Coby Turner (SBN: 266298) Seyfarth Shaw LLP 400 Capitol Mall Ste. 2350 Sacramento, California 95814 Phone: (916) 448-0159 Facsimile: (916) 288-6333 Email: cturner@seyfarth.com	
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☒ [XXX] [By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Elk Grove, California, addressed as set forth above.

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

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

☐ [By Overnight Courier] By causing a true copy and/or original thereof to be 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 August 30, 2021, at Elk Grove, California.

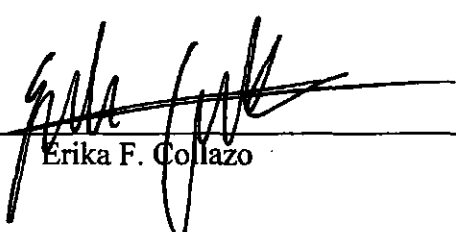

Erika F. Collazo

EXHIBIT C



Shimoda Law Corp.
9401 East Stockton Blvd.
Suite #120
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

April 28, 2021

For Online Filing:

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

Re: *Uribe v. EcoGuard Pest Management, Inc.*

Dear Labor Commissioner,

As counsel for Michael Uribe (“Plaintiff”), I am writing to provide you and the following “employers” notice pursuant to California Labor Code section 2699.3:

EcoGuard Pest Management, Inc.
5045 Robert J. Mathews Pkwy # 200
El Dorado Hills, CA 95762

Curtis Anthony Wills
P.O. Box 653
Folsom, CA 95763

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 EcoGuard Pest Management, Inc. and Curtis Anthony Wills (“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 non-exempt employees who have worked, or continue to work, for Defendants in California. 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, a pest control company, from approximately July 8, 2020 to February 23, 2021. Plaintiff traveled between multiple of Defendants’ customer’s homes each day performing pest control services or pest elimination.



Defendants paid Plaintiff and Aggrieved Employees an hourly rate in addition to bonuses, commissions, and other nondiscretionary remuneration. However, Defendants failed to incorporate the value of these bonuses, commissions, and other nondiscretionary remuneration into Plaintiff's and Aggrieved Employees' regular rates of pay for the purpose of paying overtime wages and paid sick time. For example, during Defendants' 9/14/20 to 9/27/20 pay period, Defendants' paystub reflects that Defendants paid Plaintiff a flat sum bonus of \$250 and that he worked 30.95 overtime hours and 1.5 double time hours. Defendants paid Plaintiff's overtime wages at exactly 1.5x his base hourly rate and his double time wages at exactly 2x his base hourly rate, which does not include any adjustment for the value of the \$250 flat sum bonus. This resulted in unpaid overtime and unpaid sick leave for Plaintiff and Aggrieved Employees.

Defendants did not authorize and permit Plaintiff and Aggrieved Employees to take all meal and rest periods owed to them. Defendants scheduled Plaintiff and Aggrieved Employees for back-to-back pest control appointments without providing any breaks in the schedule to take meal and rest periods. Defendants required Plaintiff and Aggrieved Employees to clock out for lunch even on occasions when they did not receive an uninterrupted full thirty (30) minute meal period. Additionally, Defendants did not have any policy for employees to take a second lunch when working longer than ten (10) hours or a rest break for every four (4) hours *or major fraction thereof*. Defendants' policies stated employees were only authorized to take one 30-minute meal period if they worked longer than five (5) hours in a workday and that employees were authorized for up to two rest periods a day, one (1) for every four hours (not every four (4) hours or major fraction thereof).

Defendants required Plaintiff and Aggrieved Employees to enter into employment contracts that included illegal terms of employment. For instance, Defendants required Plaintiff and Aggrieved Employees to agree not to compete with Defendants even after their employment ended and agree to offsets and deductions against wages for unreturned property at the time of termination or separation, for paying fines, and for paying other assessments without regard for whether they were caused by a dishonest or willful act, or by the gross negligence of the employee. Defendants knew these terms were illegal as California law clearly prohibits noncompete agreements, offsets against final wages, and charges against the employee in the absence of a dishonest or willful act or gross negligence.

Defendants' paid sick time policy did not provide Plaintiff and Aggrieved Employees with at least 24 hours of accrued sick time by their 120th day of employment. For example, Plaintiff's first day of employment was 7/8/20. 120 days after 7/8/20 is 11/5/20. Defendants did not provide Plaintiff with a full 24 hours of paid sick time until his 12/21/20 to 1/3/21 pay period.

Defendants required Plaintiff and Aggrieved Employees to incur expenses for work without paying reimbursement for such expenses. For instance, Defendants required Plaintiff and Aggrieved Employees to use their personal cellphones for work, pay for car washes for



Defendants' vehicles and pay to launder uniforms provided by Defendants. Plaintiff and Aggrieved Employees were specifically told that any company credit card was not for paying for car washes and that employees were expected to cover that cost. Additionally, Plaintiff and Aggrieved Employees were told they should use their personal cell phone to run company required applications because the available company tablets would regularly be unresponsive or experience substantial delays in running the pest route application that would cause employees to be substantially late to their next scheduled appointments. Defendants did not reimburse Plaintiff or Aggrieved Employees for these expenses.

Defendants required Plaintiff and Aggrieved Employees to download an app onto their personal cellphones called RingCentral. Defendants required Plaintiff and Aggrieved Employees to use this app to keep track of their time and to contact Defendants' customers. Defendants used the RingCentral app to secretly record Plaintiff's and Aggrieved Employees' calls with Defendants' customers. No notifications about the calls being recorded were given when the calls were outgoing to customers. Defendants did not inform Plaintiff, Aggrieved Employees, or its customers that such calls were being recorded.

Defendants failed to provide Plaintiff and Aggrieved Employees with accurate wage statements. The wage statements Defendants provided did not accurately itemize employees' gross and net wages, meal and rest period premiums, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

At the time of Plaintiff's and Aggrieved Employees' termination or separation, Plaintiff and Aggrieved Employees had overtime, sick time, and meal and rest period premiums owing to them. As of the date of this letter, Defendants have not paid Plaintiff and Aggrieved Employees these wages they are owed.

B. ALLEGATIONS AND CHARGES

Count One – Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, § 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 Two - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 5, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 5, section 11(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. 5, 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 Three – Violation of Labor Code § 226.7 and Wage Order No. 5, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 5, section 12(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 Four – 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 Five – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including overtime, meal and rest period premiums, and paid sick time, 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 Six – 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 personal cellphones, car washes for Defendants’ vehicles, and laundering of Defendants’ uniforms by Plaintiff and Aggrieved Employees. This was in violation of the law.

Count Seven – 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. Curtis Anthony Wills was an officer, director, shareholder, and/or managing agent of EcoGuard Pest Management, Inc. responsible for the violations stated herein as he was 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 Eight– 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.

Count Nine – Violation of Labor Code § 432.5 (Requiring Agreement In Writing to Illegal Employment Terms)

Labor Code section 432.5 provides that no “employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is know by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.” Defendants required Plaintiff and Aggrieved Employees to agree in writing to illegal non-competition agreements that prohibited them from competing with the company or working for a competitor of Defendants for a period of eighteen (18) months following their termination or separation. The illegality of these agreements was known to Defendants and Defendants’ managers and agents, as California law clearly prohibits such non-compete agreements. Further, Defendants required Plaintiff and Aggrieved Employees to agree in writing to an offset of their final wages for any property of Defendants not returned immediately at the time of termination or separation. The illegality of these agreements was known to Defendants and Defendants’ managers and agents, as California law clearly prohibits such offsets.

Count Ten – Violation of Labor Code §§ 221, 223, 225 (Failure to Pay Contract Wages and Unlawful Deductions)

Labor Code section 221 states that “[it] shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Labor Code section 223 prohibits employers from paying an employee less than a contractually obligated amount. As stated above, Defendants failed to pay Plaintiffs and Aggrieved Employees their contracted straight time pay for all hours worked as a result of the unlawful deductions. This was against the law.



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: _____

Justin P. Rodriguez

JPR:bb

cc: Client via e-mail

1 *Uribe v. EcoGuard Pest Management, 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, Caitlyn A. Lopez, 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 April 28, 2021, I served the following documents on the party below:

- 8 • Private Attorney General Act Letter

9
10 EcoGuard Pest Management, Inc.
11 5045 Robert J. Mathews Pkwy # 200
12 El Dorado Hills, CA 95762

Curtis Anthony Wills
P.O. Box 653
Folsom, CA 95763

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

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

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

20 I declare under penalty of perjury under the laws of the State of California that the foregoing
21 is true and correct, and that this declaration was executed on April 28, 2021, at Elk Grove,
22 California.

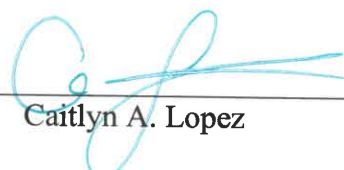
23 
Caitlyn A. Lopez
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25
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27
28

EXHIBIT D

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Uribe v. EcoGuard Pest Management, Inc.

Requesting Attorneys Name: Brittany Berzin
 E-Mail: bberzin@shimodalaw.com
 ILYM Contact: Jonathan Paul
 E-Mail: Jonathan@ilymgroup.com
 Contact Number: 310.948.7117

ESTIMATE FOR ADMINISTRATION SOLUTIONS

ASSUMPTIONS	
Total Number of Class Members	116
Estimated Mail Returned as Undeliverable	20%
NCOA	Yes
Language Translation	No
Case Duration (Year(s))	1

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	2	\$300.00
Programming of Class Database	Hourly	\$175.00	2	\$350.00
Subtotal				\$650.00

*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

PROJECT MANAGEMENT & NOTICING				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	5	\$600.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	3	\$210.00
Staff Hours for Processing Opt-Outs, Disputes & Objection(s)	Hourly	\$70.00	5	\$350.00
Report Processing	Hourly	\$70.00	5	\$350.00
NCOA	Flat Rate	\$250.00	1	\$250.00
Language Translation	Per Piece	\$0.00	0	\$0.00
Static Website	Flat Fee	\$250.00	1	\$250.00
Toll Free Customer Service Representative	Flat Fee	\$500.00	1	\$500.00
Subtotal				\$2,510.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING				
Fulfillment of Notice, English	Per Piece	\$2.00	116	\$232.00
USPS First Class 1oz Postage	Per Piece	\$0.52	116	\$60.32
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$5.00	23	\$116.00
Storage, Photocopies, Deliveries	Flat Fee	\$312.36	1	\$312.36

Subtotal \$720.68

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	3	\$450.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	3	\$375.00
Check, Stub & Release - Print & Mail (1099)	Per Check	\$3.00	116	\$348.00
USPS First Class Postage	Per Piece	\$0.52	116	\$60.32
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$10.00	12	\$116.00
Preparation of Taxes	Hourly	\$120.00	3	\$360.00
Uncashed Funds to State Controller	Per Piece	\$750.00	1	\$750.00
Annual Filing of Tax Return	Per Year	\$750.00	1	\$750.00

**Additional Bank fees may apply*

Subtotal \$3,209.32

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	3	\$300.00
Project Manager Final Reporting	Hourly	\$120.00	3	\$360.00
Declaration	Hourly	\$125.00	2	\$250.00

Subtotal \$910.00

TOTAL CASE ESTIMATE - NOT TO EXCEED: \$8,000.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, 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 ILYM 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 ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence 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.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, 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.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto 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 waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

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.

EXHIBIT E

Plaintiff Michael Uribe - Shimoda & Rodriguez Law, PC Costs

Date	Description	Amount
4/28/2021	Payment to LWDA - PAGA Filing Fee	\$75.00
4/28/2021	Certified Mail - PAGA Letter(s)	\$8.62
5/1/2021	Administration/Copy Fee - Class Action - Phone, Fax, Scan, Copying, Westlaw Legal Research Fees	\$500.00
5/12/2021	Service Fee to Court - Complaint	\$40.00
5/12/2021	Payment to Court - Complaint	\$435.00
6/21/2021	Payment to Court - Complex Fees	\$1,000.00
7/1/2021	Service Fee to Court - Proof of Service of Summons	\$40.00
8/30/2021	Service Fee to Court - First Amended Complaint	\$40.00
9/24/2021	Postage - Discovery Requests to Defendant	\$7.40
12/13/2021	Payment for Records - PRA Documents	\$3.99
1/3/2022	Mediation Fee	\$3,250.00
2/2/2022	Service Fee to Court - Joint Case Management Conference Statement and Jury Fees	\$40.00
2/2/2022	Payment to Court - Jury Fees	\$150.00
3/3/2022	Parking - Mediation	\$24.35
3/8/2022	Mediation Fee - Additional Session Time	\$600.00
7/5/2022	Service Fee to Court - Joint Case Management Conference Statement	\$40.00
Anticipated	Payment to Court - Preliminary Approval Motion	\$60.00
Anticipated	One Legal Filing Fee - Preliminary Approval Motion	\$300.00
Anticipated	Payment to Court - Final Approval Motion	\$60.00
Anticipated	One Legal Filing Fee - Final Approval Motion	\$300.00
Anticipated	Service Fee to Court - Joint Case Management Conference Statement	\$40.00
Anticipated	One Legal Filing Fee - Compliance Declarations	\$70.00
		\$7,084.36

EXHIBIT F

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

MICHAEL URIBE, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

ECOGUARD PEST MANAGEMENT, INC., a
California Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 34-2021-00300650

CLASS ACTION

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

ATTENTION: all non-exempt employees who have worked, or continue to work, for Defendant EcoGuard Pest Management, Inc. in California from May 12, 2017, to [REDACTED] (the “Class Members”), and/or from April 28, 2020, to [REDACTED] (the “Aggrieved Employees”).

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

Pursuant to an order from the Sacramento County Superior Court (“Court”) granting preliminary approval of this class action settlement, entered on [REDACTED], you are receiving notice of a proposed class action and Private Attorneys General Act (“PAGA”) settlement between Plaintiff Michael Uribe (“Plaintiff” or “Class Representative”), and Defendant EcoGuard Pest Management, Inc. (“EcoGuard”) on behalf of Class Members as defined above. You are receiving this notice because EcoGuard’s records indicate you fall within the definition of “Class Member.” EcoGuard’s records also indicate that you worked [REDACTED] weeks during the applicable Class Period (as defined below), which means your share of the settlement proceeds is estimated to be [REDACTED], and your share of the PAGA payment is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on whether any Class Members opt out of participation in the settlement, and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court’s order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On May 12, 2021, Plaintiff filed a Complaint against EcoGuard in the Sacramento County Superior Court of California on behalf of himself and Class Members and Aggrieved Employees. The term “Action” means this putative class and representative action pending in Sacramento County Superior Court, Case No. 34-2021-00300650. The Class Period is May 12, 2017, to [REDACTED] (the “Class Period”), and the PAGA Period is April 28, 2020, to [REDACTED] (the “PAGA Period”).

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself, Class Members, and Aggrieved Employees. Plaintiff alleged that EcoGuard violated California law by 1) failing to pay Plaintiff,

Class Members, and Aggrieved Employees for all hours worked; 2) failing to pay the correct regular rates of pay due to failing to account for the value of commissions, bonuses, and different rates of pay being paid within the same workweek; 3) failing to authorize and permit all meal and rest periods and failing to keep track of whether employees took meal periods; 4) failing to reimburse employees for the use of personal items for work, such as personal cellphones, car washes, and laundering their uniforms; 5) failing to include the correct hourly rates and gross and net wages on wage statements issued to employees; 6) requiring employees to enter into agreements with illegal terms; 7) failing to pay all paid sick time; and 8) failing to notify employees that calls made from the RingCentral app were being recorded. EcoGuard has denied all of Plaintiff's allegations. 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 a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. EcoGuard vigorously denies all allegations of wrongdoing whatsoever and has entered into this settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden, expense, uncertainty, and distraction associated with ongoing litigation.

The Parties have entered into a Joint Stipulation of Regarding Class Action PAGA Settlement and Release ("Agreement"), which has been preliminarily approved by the Court. The Agreement applies to any and all Class Members and/or Aggrieved Employees as defined above. "Class Member" does not include persons who submit a valid request to opt out (as explained below). If you are a Class Member, you have the opportunity to participate in the settlement, or to exclude yourself ("opt out") from the settlement. This notice is to advise you of how you can either participate in the settlement or be excluded from the settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, EcoGuard has agreed to pay a total sum of Three Hundred Ten Thousand Dollars (\$310,000) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums, if approved by the Court, for attorneys' fees not to exceed 35% of the Gross Settlement Amount (which equals \$108,500), attorneys' costs not to exceed \$7,500, Claims Administrator Costs estimated not to exceed \$10,000, Class Representative's Enhancement Payment of \$15,000, and \$10,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer taxes attributable to payments allocated as wages will be paid by EcoGuard in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$10,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees, defined above.

The number of weeks you worked during the Class Period and your estimated share of the Net Settlement Amount and PAGA Payment ("Claim Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by participating Class Members, the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claims.

B. CLAIM AMOUNTS AND ALLOCATION BETWEEN CLASS MEMBERS AND AGGRIEVED EMPLOYEES

EcoGuard will pay Claim Amounts through the Claims Administrator, as described below, to each Class Member who does not opt out of the settlement and to Aggrieved Employees. All Claim Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Claim Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as two-thirds for disputed interest, statutory penalties, civil penalties and other non-wage damages for which IRS Forms 1099-MISC and 1099-INT will issue and one-third for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Class Members who do not opt out and Aggrieved Employees will not require the submission of a claim form. Each Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment

will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. Receipt of the Claim Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on EcoGuard's Records and Resolution of Workweek Disputes

For each Class Member and Aggrieved Employee, the amount payable will be calculated by the Claims Administrator from EcoGuard's records. EcoGuard's records will be presumed correct unless evidence to the contrary is provided to the Claims Administrator. EcoGuard's 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 or Aggrieved Employee. If a Class Member or Aggrieved Employee disputes the accuracy of EcoGuard's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member or Aggrieved Employee. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than [REDACTED]. The dispute will be resolved by the Claims Administrator based on the records and evidence provided. The Claims Administrator's decision on all disputes will be final and binding.

D. Non-Compete Agreements Void

As part of the settlement, EcoGuard has agreed that any prior non-compete agreements it entered into with Class Members and Aggrieved Employees are void and unenforceable.

E. Release of Claims

For those Class Members who do not opt out and all Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released any and all claims contained in the operative Complaint and any additional wage and hour claims, whether known or unknown, that were or could have been brought based on the facts alleged in any version of the complaints filed in this matter arising during the period from May 12, 2017, through May 2, 2022. The claims released by the Class Members include, but are not limited to, statutory, constitutional, contractual, penal code, or common law claims for wages, damages, unpaid costs or expenses, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief, regardless of the forum in which they may be brought, to the fullest extent such claims are releasable by law, for all claims arising out of or based upon the allegations in the Complaint(s), including: (a) for failure to properly pay minimum or overtime wages; (b) for failure to provide meal periods or pay premiums in lieu thereof; (c) for failure to provide rest periods or pay premiums in lieu thereof; (d) for failure to pay or provide wages, penalties, premiums, or other compensation at the proper rate of pay; (e) for recordkeeping or wage statement violations; (f) for failure to timely pay wages upon separation and all waiting time penalties; (g) for failure to reimburse employees for business expenses; (h) for unlawfully recording or recording individuals' conversations without consent, whether under the California Penal Code, in violation of California's right to privacy, or otherwise; (i) for having employees enter into an illegal contract; (j) for unlawful deductions from pay; and (k) for failure to provide or pay for sick time; and (m) any and all other claims that could have been alleged based on the facts alleged in the Complaint(s) in the action. The released claims include, without limitation, claims meeting the above definition(s) under any and all applicable statutes, including without limitation any provision of the Fair Labor Standards Act; California Labor Code; California Penal Code; and California Bus. & Prof. Code §§ 17200 *et seq.* based on the facts or claims alleged in the Complaint(s) in the action; and any provision of the applicable California Industrial Welfare Commission Wage Orders based on the facts alleged in the Complaint(s) in the action.

Aggrieved Employees will be deemed to have released all Private Attorneys General Act claims for civil penalties contained in the operative Complaint or that could have been raised in the operative Complaint based on the allegations set forth therein, through the PAGA Claim Period. Aggrieved Employees cannot opt out of this Release of Claims.

The individuals released ("Released Parties") include EcoGuard, as well as EcoGuard's owners, officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members and Aggrieved Employees can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if they have questions about the released claims and what they mean.

F. ATTORNEYS' FEES AND COSTS

Class Members and Aggrieved Employees do not need to pay individually any portion of Class Counsel's attorneys' fees and costs. Any payments for those attorneys' fees and costs must be approved by the Court and will be deducted from the Gross Settlement Amount. Class counsel intends to request up to a maximum of 35% of the Gross Settlement Amount (which equals \$108,500), and attorneys' costs not to exceed \$7,500.

G. REASONABLENESS OF SETTLEMENT

The Parties agree that the Settlement is fair, reasonable, and adequate as to all Class Members and Aggrieved Employees and should be given final approval by the Court.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. PARTICIPATING IN THE SETTLEMENT

If you wish to participate in the settlement and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on participating in the Settlement.

B. 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. THE REQUEST TO OPT-OUT MUST (A) STATE YOUR FULL NAME AND DATE OF BIRTH; (B) A STATEMENT THAT YOU DO NOT WANT TO BE A CLASS MEMBER, DO NOT WANT TO PARTICIPATE IN THE SETTLEMENT, AND/OR WANTS TO BE EXCLUDED FROM THIS SETTLEMENT; (C) IDENTIFY THE CASE NAME AND NUMBER (*I.E.*, URIBE V. ECOGUARD PEST MANAGEMENT, INC., 34-2021-00300650); (D) BE SIGNED; AND (E) BE POST-MARKED NO LATER THAN [REDACTED]. THE REQUEST TO OPT OUT MUST BE SIGNED, DATED AND MAILED BY FIRST CLASS U.S. MAIL OR THE EQUIVALENT, TO:

[admin info]

The request to opt out must be postmarked no later than [REDACTED]. If you submit a request to opt out which is not postmarked by [REDACTED], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. If the request to opt out 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 to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Claims Administrator, no longer be a Class Member and not receive their share of the class settlement payment. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. OBJECTION TO SETTLEMENT

If you do not opt out of the settlement, you can object to the terms of the Agreement. However, if the Court rejects your objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s); (d) identify the case name and number (*i.e.* *Uribe v. EcoGuard Pest Management, Inc.*, 34-2021-00300650) (e) be signed; and (f) be post-marked no later than [REDACTED]. The objection must be sent to the Claims Administrator at the address identified in section III.B and to counsel for Plaintiff and EcoGuard at the addresses identified in section IV of this notice.

If you have submitted a written objection as outlined above, you may also appear at the Final Approval Hearing, either in person or through your own attorney, to state your objection. The Parties request that you file a notice of intent to appear with the Court

and contact Class Counsel and EcoGuard's Counsel to inform them of your intent to appear at the Final Approval Hearing. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

After final approval of the settlement has been granted by the Court, each and every Class Member who does not opt out of the settlement and Aggrieved Employee, will release EcoGuard and the Released Parties from the released claims described above. In other words, if you were employed as a Class Member by EcoGuard in California during the Class Period and you do not exclude yourself from the settlement, or you were an Aggrieved Employee during the PAGA Period, you will be deemed to have entered into this release and to have released the above-described claims. In addition, you will be barred from ever suing EcoGuard and the Released Parties with respect to the 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 ____, [address] on [] at [] to determine whether the Agreement 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, approve the PAGA Payment, and approve the Class Representative's Enhancement Payment. The hearing may be continued without further notice to Class Members or Aggrieved Employees. It is not necessary for you to appear at this hearing, and if you submit anything to the Court in writing, it will be considered even if you do not make an appearance.

VI. ADDITIONAL INFORMATION

If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel or EcoGuard's Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Coby M. Turner
Phillip J. Ebsworth
Seyfarth Shaw LLP
400 Capitol Mall, Suite 2350
Sacramento, California 95814-4428
Tel: (916) 448-0159
Fax: (916) 558-4839
*On behalf of Defendant EcoGuard Pest
Management, Inc.*

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

EXHIBIT G

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)
Shimoda & Rodriguez Law, PC
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff MICHAEL URIBE
6 individually and on behalf of similarly situated employees

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

11 MICHAEL URIBE, individually and on behalf
12 of all other similarly situated employees,

13 Plaintiff,

14 vs.

15 ECOGUARD PEST MANAGEMENT, INC.,
16 a California Corporation; and DOES 1 to 100,
inclusive,

17 Defendants.

Case No. 34-2021-00300650

CLASS ACTION

**DECLARATION OF BRITTANY V. BERZIN
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA SETTLEMENT**

Reservation No.: 2658835

Date: October 21, 2022

Time: 9:00 a.m.

Dept.: 25

Judge: Hon. Jill H. Talley

Filed: May 12, 2021

FAC Filed: August 31, 2021

Trial Date: None Set

1 I, Brittany V. Berzin, 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 Michael Uribe (“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 Regarding Class Action and PAGA Settlement and Release
7 (“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 Defendant EcoGuard Pest Management, Inc. (“Defendant”) failed to pay overtime, failed to
10 provide accurate wage statements, failed to timely pay final wages, failed to provide meal and rest
11 periods or pay premiums in lieu thereof, failed to reimburse expenses, failed to provide all paid sick
12 time, engaged in unfair competition, failed to pay contract wages, made unlawful deductions,
13 unlawfully recorded phone calls, and violated Labor Code section 558. Plaintiff also alleged liability
14 for civil penalties under the Private Attorneys General Act (“PAGA”). These claims were based on
15 allegations that Defendant violated California law by 1) failing to pay Plaintiff, Class Members, and
16 Aggrieved Employees for all hours worked; 2) failing to pay the correct regular rates of pay due to
17 failing to account for the value of commissions, bonuses, and different rates of pay being paid within
18 the same workweek; 3) failing to authorize and permit all meal and rest periods and failing to keep
19 track of whether employees took meal periods; 4) failing to reimburse employees for the use of
20 personal items for work, such as personal cellphones, car washes, and laundering their uniforms; 5)
21 failing to include the correct hourly rates and gross and net wages on wage statements issued to
22 employees; 6) requiring employees to enter into agreements with illegal terms; 7) failing to pay all paid
23 sick time; and 8) failing to notify employees that calls made from the RingCentral app were being
24 recorded. The PAGA, waiting time penalty, wage statement violation, and unfair competition claims
25 also derive from these violations.

26 3. Plaintiff is the only named representative in this matter. From our initial investigations
27 of Plaintiff’s claims and documents, we believed these claims had merit and could be maintained as a
28 class action. We filed the action on or about May 12, 2021. Plaintiff exhausted administrative

1 remedies through the Labor and Workforce Development Agency (“LWDA”) prior to amending the
2 Complaint to add a PAGA claim. Plaintiff filed a notice with the LWDA on April 28, 2021 setting
3 forth the facts and theories of liability. A true and correct copy of the notice filed with the LWDA is
4 being filed with this Motion as Exhibit C. A copy of the notice was also sent to Defendant via certified
5 mail and the \$75.00 filing fee was remitted to the LWDA at that time. There was no response by the
6 LWDA regarding its intent to investigate the claims alleged in Plaintiff’s notice for more than 65 days.
7 As such, Plaintiff became authorized to commence a civil action under the PAGA and filed a First
8 Amended Complaint on August 31, 2021. A true and correct copy of Plaintiff’s operative Complaint is
9 filed with this Motion as Exhibit B. A copy of the Complaint was uploaded to the LWDA on October
10 1, 2021, after we received an endorsed copy back 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. Defendant is represented in this matter by Seyfarth Shaw LLP. From the beginning,
13 Defendant has contested the merits of this case, the suitability of the case for class action or
14 representative treatment, the manageability of the case at trial, and Plaintiff’s ability to prove a violation
15 in each pay period for each employee among other defenses and contentions they made challenging the
16 propriety of this action. For instance, Defendant contended that a majority of Class Members and
17 Aggrieved Employees signed arbitration agreements that would preclude them from participating in the
18 action, that Defendant is a small business with limited resources, that Defendant could demonstrate its
19 good faith efforts to comply with California laws, and that Defendant is a family-owned and operated
20 business that has employed many family members and friends, which could make the case more
21 difficult to litigate. Defendant further contended, even assuming there was a finding supporting the
22 imposition of PAGA penalties, that the Court would likely exercise its discretion to substantially reduce
23 any such penalties owed based on evidence of good faith attempts to comply with California Labor
24 Code obligations by Defendant. Notwithstanding its agreement to settle this matter, Defendant believes
25 the practices Plaintiff is contending are unlawful either do not exist or, to the extent they do exist, fully
26 comply with all state and federal employment laws with respect to Plaintiff and Class Members. Also,
27 Defendant has contended that this matter is not appropriate for class certification outside of this
28 proposed class settlement.

1 6. Based on the expected testimony from Plaintiff and Class Members, a review of
2 Defendant's policies and procedures and other documents relating to the alleged claims, information on
3 the number of Class Members, the number of workweeks worked by Class Members, and a
4 representative sample of Class Members' payroll data, the scope of the potential damages to Plaintiff
5 and Class Members in light of the claims alleged, the uncertainty in the law with regard to certification,
6 and the negotiations that have taken place, I am convinced that the proposed settlement is in the best
7 interest of the class. The length and risks of trial and other normal perils of litigation that impact the
8 value of the claims were also considered and weighed in reaching the Agreement. In addition, I
9 carefully considered the prospect of potential class certification issues as well as the uncertainty of class
10 certification, the difficulties of complex litigation, and the lengthy process of establishing specific
11 damages and various possible delays and appeals in agreeing to the proposed settlement. I further
12 considered the fact that penalties under the PAGA could be substantially cut at the discretion of the
13 Court even if Plaintiff was successful on proving those claims and there was risk that a Court could find
14 no willfulness in the failure to pay wages at separation, which would eliminate the value of the waiting
15 time penalty claim entirely. Overall, I believe it is more beneficial to secure a guaranteed benefit to the
16 class now rather than to proceed with litigation and potentially obtain zero funds to the class due to legal
17 or factual issues in the case.

18 7. My office, including the partners Galen T. Shimoda and Justin P. Rodriguez, our
19 paralegals, and myself, along with Plaintiff's assistance, thoroughly investigated the merits of the claims
20 and potential damages for such claims. The parties engaged in informal discovery and exchange of
21 documents, including a representative sampling of employee data, such as timecards, paystubs, payroll
22 data and relevant policies for the entirety of the statute of limitations applicable to the alleged claims.
23 The discovery covered all aspects of the asserted claims, including certification issues, merits issues,
24 damages, the scope and configuration of Class Members, the content and implementation of the wage
25 and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas.
26 From this production we were able to determine information critical to a reliable damages analysis such
27 as the average hourly rate, average daily hours worked, average number of workweeks and pay periods
28 that had potential violations based on the asserted claims, the frequency with which violations occurred

1 in a given week and/or pay period, and the number of former employees. This information allowed my
2 office to assess both liability and damages and create an accurate damages model. Plaintiff assisted in
3 all aspects of this litigation including providing factual information relating to Plaintiff's and Class
4 Members' employment conditions, providing a substantial number of documents, and answering
5 questions regarding Defendant's factual contentions in this matter. This was important because it
6 directly related to our ability to maintain this case as a class action and our ability to obtain a favorable
7 settlement for the class.

8 8. Throughout this litigation our office had numerous communications with Defendant's
9 Counsel discussing our respective positions. The parties engaged in mediation on March 3, 2022 using
10 an experienced mediator, Russ J. Wunderli, Esq. It was only after approximately nearly one year of
11 extensive, arm's length negotiations that the parties were able to reach a settlement, which only occurred
12 after a full-day mediation. The negotiations were at all times contentious and adversarial, though still
13 professional in nature.

14 9. The parties reviewed and analyzed substantial amounts of data regarding the class
15 claims. Based on our analysis and review of all relevant documents and Class Member information, I
16 have determined that the maximum damages for the asserted class claims is approximately
17 \$2,879,674.05, which includes civil penalties under the PAGA. The likely exposure for PAGA
18 penalties is approximately \$1,875,110.88 based on the counts alleged to the LWDA and the class data.
19 Based on our research, we did not find any prior Labor Commissioner or court decisions that stated
20 Defendant's practices and/or policies were improper. As such, a "subsequent violation" may not be
21 found for penalty calculation purposes and the exposure analysis here is based on an "initial violation"
22 valuation being adopted by any fact finder if this matter went to trial.

23 10. However, I believe the PAGA penalties in this case may be reduced due to the fact that
24 the penalties would be in addition to amounts owed for substantive violations and much of the penalties
25 are based on violations due to technical non-compliance with the Labor Code. Furthermore, Defendant
26 produced a substantial number of documents that a Court may find demonstrates a good faith attempt at
27 compliance that merits the reduction of civil penalties. Courts regularly cut civil penalties on PAGA
28 claims where statutory penalties for the same violations are assessed as well. Courts are statutorily

1 authorized to use discretion to reduce penalties and the range of discretion used varies substantially.
2 *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction);
3 *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction).
4 Thus, civil penalties may be cut to approximately \$337,519.96 (82% reduction) or lower given the
5 derivative recovery. Taking this into account, the likely recovery if Plaintiff was successful at trial on
6 proving all the substantive class damages plus civil penalties after a reduction of the PAGA penalties
7 would be approximately \$1,342,083.13. Taking this into account, Plaintiff's \$310,000 gross recovery
8 under the Agreement represents approximately 23.1% of the maximum likely value in this matter.
9 After deducting from the Gross Settlement Amount the proposed allocations for attorneys' fees and
10 costs, any Enhancement Payment to the Class Representative, Claims Administrator Costs, and the
11 75% portion of the PAGA Payment to the LWDA, the net recovery under the Agreement represents
12 approximately 12% of the maximum likely value in this matter. The average net award is
13 approximately \$1,523.58. I believe the Agreement represents a reasonable compromise of claims based
14 on the legal and factual disputes in this case, the risks discussed above, and the additional value of non-
15 monetary recovery to Class Members and Aggrieved Employees from Defendant's agreement that any
16 non-compete agreements it entered into with Class Members and Aggrieved Employees are void and
17 unenforceable. The ability to secure a guaranteed settlement now and ensure Class Members receive
18 some compensation, rather than proceed to further litigation and potentially recover nothing, was a
19 motivating factor in reaching this Agreement.

20 11. In agreeing to represent Plaintiff and take on the case for all Class Members and
21 Aggrieved Employees, our office agreed to take this case on a contingency basis, meaning that we
22 would take a percentage of any settlement or judgment should we recover a monetary amount. We
23 took a risk that we would not recover any money in this matter if we were unsuccessful at trial. We
24 also took on the risk that the case may be subject to an unfavorable summary judgment ruling.
25 However, we believe it is important to make sure employees are able to find affordable representation
26 in order to ensure that employers are complying with all their legal obligations towards employees and
27 paying employees all their hard-earned wages.

28 //

12. I am an associate at Shimoda & Rodriguez Law, PC. Our law firm is a boutique law practice that focuses primarily on employment litigation, emphasizing wage and hour litigation. I attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Psychology. I received my J.D. from the University of the Pacific McGeorge School of Law. I joined Shimoda & Rodriguez Law, PC as a law clerk in February 2015 where I gained civil litigation experience working on individual, class action and PAGA employment cases throughout law school. I also participated in an employment law clinic in 2015 and 2016 that helps low-income workers by providing free legal consultations, advising employees of their legal remedies on a variety of matters (*e.g.*, wage and hour, discrimination/harassment, California leave laws, unemployment, workers' compensation, retaliation, and wrongful termination, etc.), preparing wage claims, and providing representation in wage claims before the California Labor Commissioner. From 2016-2017, I completed an externship at the Federal Public Defenders Office as a Certified Law Student where I obtained discovery, completed legal research, drafted motions, negotiated plea deals, represented clients in a variety of hearings (*e.g.*, arraignments, motion hearings, sentencing hearings, etc.), and defended a client against five misdemeanor charges in a jury trial in the United States District Court for The Eastern District of California. I was also a member of the nationally recognized McGeorge Mock Trial Team and went on to coach a high school Mock Trial team in 2018 after graduating from law school. In May 2017, I graduated from the University of the Pacific, McGeorge School of Law with Great Distinction and was inducted into the Order of the Coif, graduating in the top 10% of my class. I received the Witkin Award for Academic Excellence in Legal Research and Writing, Civil Procedure, Bankruptcy, and Criminal Procedure. From 2020 to present, I have been recognized as a Super Lawyer (Rising Star). I have been a member of the executive committee of the Sacramento County Bar Association Labor & Employment Section since January 2020, serving as Co-Chair of the committee in 2021. I have over seven years of experience working on civil litigation and employment law matters. Most of that experience has been specific to analyzing and litigating wage and hour claims. As an associate, I have worked on a variety of individual, class action, and PAGA cases involving wage and hour claims, such as failure to pay overtime, failure to pay minimum wages, failure to provide meal and rest periods, failure to pay reimbursement expenses, unlawful deductions, failure to keep accurate time records,

1 failure to provide paid sick leave, failure to pay all wages upon separation, unfair competition, breach
2 of contract, independent contractor misclassification, and salaried misclassifications. Some of the class
3 action and/or PAGA cases I am litigating and/or have litigated as lead or co-counsel include the
4 following:

- 5 • *Arosemena v. Ranchhodrai, Inc., et al.*, Case No. STK-CV-UOE-2019-15963 (San Joaquin
6 Sup. Ct.);
- 7 • *Arroyo v. Epic Home Solar*, Case No. 34-2021-00310634 (Sac. Sup. Ct.);
- 8 • *Balli v. Brown Box Investments, Inc., et al.*, Case No. 34-2018-00232656 (Sac. Sup. Ct.);
- 9 • *Barkhousen, et al. v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin
10 Sup. Ct.);
- 11 • *Barrios v. American Property Management, Inc.*, Case No. 1:18-cv-00352-AWI-SKO (E.D.
12 Cal.);
- 13 • *Blair v. Clark Wagaman Designs*, Case No. 34-2021-00313156 (Sac. Sup. Ct.);
- 14 • *Callahan v. Creative Alternatives, Inc., et al.*, Case No. 2027518 (Stanislaus Sup. Ct.);
- 15 • *Collazo v. T.O.P. Marketing Group, Inc.*, Case No. 34-2022-00314092 (Sac. Sup. Ct.);
- 16 • *Cristobal v. BAT Residential Services, Inc.*, Case No. FCS056331 (Solano Sup. Ct.);
- 17 • *Coronado v. MGD, Inc.*, Case No. STK-CV-UOE-2021-893 (San Joaquin Sup. Ct.);
- 18 • *Estrada v. MAD Security Services, Inc.*, Case No. 34-2021-00300627 (Sac. Sup. Ct.);
- 19 • *Ferreira v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- 20 • *Finance of America Wage And Hour Cases*, Case No. JCCP 5081 (Orange County Sup. Ct.);
- 21 • *Gomez, et al. v. Kleary Masonry, Inc.*, Case No. 34-2020-00278067 (Sac. Sup. Ct.);
- 22 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac. Sup. Ct.);
- 23 • *Gordon, et al. v. Hospice Source, LLC*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- 24 • *Green v. Warden Security Associates, Inc.*, Case No. 22CV396140 (Santa Clara Sup. Ct.);
- 25 • *Hampton v. Unlimited Security Specialists, Inc.*, Case No. CV2021-2130 (Yolo Sup. Ct.);
- 26 • *Hercules, et al. v. Maximus Services, LLC*, Case No. 34-2019-00268385 (Sac. Sup. Ct.);
- 27 • *Insixiengmay v. Hyatt Corporation*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal);
- 28 • *Kurtz v. Perimeter Security Group, LLC, et al.*, Case No. CU19-083650 (Nevada Sup. Ct.);

- *Leong-Call v. MRB Foods, Inc.*, Case No. 34-2020-00287486 (Sac. Sup. Ct.);
- *Magat v. Medical Care Professionals, Inc., et. al.*, Case No. SCV0042579 (Placer Sup. Ct.);
- *Mayorga v. Brown Strauss, Inc.*, Case No. STK-CV-UOE-2020-0010906 (San Joaquin Sup. Ct.);
- *McGhee v. Salute Incorporated*, Case No. 34-2022-00315317 (Sac Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Meals v. Grass Valley Extended Care, Inc., et al.*, Case No. CU19-083606 (Nevada Sup. Ct.);
- *Munoz v. Wilmor And Sons Plumbing And Construction*, Case No. 34-2021-00306609 (Sac. Sup. Ct.);
- *Neufield v. Professional Transportation, Inc.*, Case No. 34-2021-00309849 (Sac. Sup. Ct.);
- *Ruiz v. CTE Cal, Inc.*, Case No. 34-2020-00289168 (Sac. Sup. Ct.);
- *Saavedra, et al. v. SMF Global, Inc.*, Case No. 34-2018-00243363 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc., et al.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- *Scoggins, et al. v. Energy Star Construction, Inc.*, Case No. 34-2018-00243048 (Sac. Sup. Ct.);
- *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Tracy v. Von Housen's Sacramento, Inc.*, Case No. 34-2020-00282778 (Sac. Sup. Ct.);
- *Vasquez v. Chriswell Home Improvements, Inc.*, Case No. 34-2021-00305938 (Sac. Sup. Ct.);
- *Villarruel, et al. v. General Produce Company, et al.*, Case No. 34-2021-00311463 (Sac. Sup. Ct.);
- *Walker v. Yan Kalika Dental Corporation*, Case No. 34-2021-00305106 (Sac. Sup. Ct.); and
- *Webb v. Professional Healthcare At Home, LLC*, Case No. FCS055317 (Solano Sup. Ct.).

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

1 14. Justin P. Rodriguez, Esq., also worked with me on this matter and was critical in
2 assisting with all aspects of the litigation of this case. Mr. Rodriguez attended and graduated college
3 from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the Departmental Citation for
4 Academic Achievement in the Philosophy program. He was one of only two recipients of this award
5 out of the entire Philosophy Department. After U.C. Davis, Mr. Rodriguez attended the University of
6 the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris Doctorate. He
7 graduated in the top 20% of his class and was a member of the Traynor Honor Society at McGeorge.
8 Other academic achievements of his include receiving a Witkin Award (top grade) in his legal research
9 and writing course, a Witkin Award in complex civil litigation, being a member of the Dean's List from
10 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from 2009–2010, being
11 an Associate Comment Editor for the *Pacific McGeorge Global Business & Development Law Journal*
12 from 2010–2011, and being selected as a Sacramento County Bar Association Diversity Fellow in
13 2009. Mr. Rodriguez was also a member of the Employment and Labor Law Society and an officer for
14 the Latino Law Students Association from 2009 to 2010.

15 15. Mr. Rodriguez was an associate of the Shimoda Law Corp from 2011 to 2016 and
16 became a partner in 2017. Shimoda Law Corp. became Shimoda & Rodriguez Law, PC, in 2022.
17 Since 2017, he has received an AV Preeminent rating from Martindale-Hubbell for his legal ability and
18 ethical standards. From 2018 to present, he has been recognized as a Super Lawyer (Rising Star). In
19 September 2018, he was a panel speaker for the Sacramento County Bar Association Labor and
20 Employment Law Section's presentation of "*Epic Systems*, PAGA, and the Future of Employment
21 Arbitration in California." In July 2020, he was a panel speaker for the Association of Defense
22 Counsel of Northern California & Nevada presentation of "Class Actions and PAGA Claims." His
23 practice focuses on complex civil litigation, including wage and hour class actions, PAGA claims, and
24 Fair Labor Standards Act ("FLSA") claims. He is actively involved in most of the complex litigation
25 handled by our firm. Class and/or PAGA actions he has litigated or is currently litigating, including the
26 instant case, includes, but is not limited to, the following:

- 27 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 28 • *Adams-Anguy v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);

- 1 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 2 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 3 • *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080
- 4 (San Joaquin Sup. Ct.);
- 5 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 6 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 7 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
- 8 Sup. Ct.);
- 9 • *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup.
- 10 Ct.);
- 11 • *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- 12 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-
- 13 00271174 (Sac. Sup. Ct.);
- 14 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
- 15 Ct.);
- 16 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
- 17 Ct.);
- 18 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
- 19 Sup. Ct.);
- 20 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 21 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
- 22 Ct.);
- 23 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 24 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
- 25 00209613 (Sac. Sup. Ct.);
- 26 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 27 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-
- 28 00222101 (Sac. Sup. Ct.);

- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup. Ct.);
- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hellum v. AI Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB (E.D. Cal.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-

00082201 (Sac Sup. Ct.);

- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovation Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.) ;
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.) ;
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (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. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

17. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977), *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiff and our firm have been able to secure an identifiable benefit on behalf of the class and equity counsels that the cost of the representation should be born equally amongst all class members receiving these benefits. The settlement recovery provides an excellent result and is the product of substantial time and effort in analyzing the facts and law applicable to this case. I agreed to take this case on a contingency basis and as a class action with the possibility that I would not receive any compensation for my time and efforts due to issues regarding the merits and/or certification and have carried that risk over the course of the case. I have reviewed fee arrangements and Court ordered fee awards in similar class cases and I believe that the thirty-five percent (35%) fee request is within the accepted ranges. In my experience with contingency cases in employment law cases, the typical percentage negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation. In class action litigation, my experience in my own

1 firm and working with several other firms has been that the typical percentage negotiated between
2 parties and approved by a court ranges from thirty to forty percent (30% to 40%) based on the same
3 factors. I have also reviewed several recent Federal District Court Cases where the Court has approved
4 common fund based fee requests. These cases include *In re Activision Sec. Litigation*, 723 F.Supp.
5 1373, 1379 (N.D. Cal. 1989), *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-
6 cv-0063, *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745, *Green,*
7 *et al. v. Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069, *Benitez et*
8 *al. v. Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122, *Chavez et al. v. Petrissans et al.*, USDC
9 Eastern District, Case No. 1:08-cv-00122, and *Willis et al. v. Cal-Western Transport*, USDC Eastern
10 District, Case No. 1:00-cv-05695, which are cited in Plaintiff's Memorandum of Points and Authorities.
11 I believe my request of \$108,500 (approximately 35%) for attorneys' fees is justified given the results
12 obtained on behalf of the class. I will provide a lodestar analysis in support of this fee request with
13 Plaintiff's motion for final approval. Moreover, at this time, my firm has advanced all costs for
14 Plaintiff and Class Members and has not received any compensation whatsoever for our time expended
15 in this case. The expected costs through final approval are not expected to exceed \$7,500. Attached as
16 Exhibit E is a true and correct copy of the costs incurred prior to the filing of this Motion and the
17 expected costs incurred through the final approval and fairness hearing. Any difference in the actual
18 costs and the maximum amount allocated under the Agreement will be added to the Net Settlement
19 Amount.

20 18. I have used several class action administrator companies in the wage and hour class
21 actions I have resolved in the past and believe ILYM Group, Inc. will provide the best service to
22 administer the proposed class settlement. ILYM Group, Inc. has provided a quote for the estimated
23 maximum cost of administering the class settlement of approximately \$8,000. A true and correct copy
24 of a cost estimate provided by ILYM Group, Inc. is filed with this Motion as Exhibit D. This is only an
25 estimate, and final pricing may vary depending on the issues, if any, that arise during the administration
26 of the settlement. However, the difference between the actual, lesser costs and \$10,000, if any, will be
27 paid to the participating Class Members on a pro rata basis.

28 //

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

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

21. No counsel in this action has any interest or involvement in the State's Unclaimed Property Fund where the value of any uncashed checks will be sent pursuant to the Settlement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 23rd day of September 2022 in Elk Grove, California.



Brittany V. Berzin

1 Galen T. Shimoda (Cal. State Bar No. 226752)
 2 Justin P. Rodriguez (Cal. State Bar No. 278275)
 3 Brittany V. Berzin (Cal. State Bar No. 325121)
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5 Attorneys for Plaintiff MICHAEL URIBE
 6 individually and on behalf of similarly situated employees

7
 8 **SUPERIOR COURT OF CALIFORNIA**
 9 **FOR THE COUNTY OF SACRAMENTO**

10
 11 MICHAEL URIBE, individually and on behalf
 12 of all other similarly situated employees,

13 Plaintiff,

14 vs.

15 ECOGUARD PEST MANAGEMENT, INC.,
 16 a California Corporation; and DOES 1 to 100,
 inclusive,

17 Defendants.

Case No. 34-2021-00300650

CLASS ACTION

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

Reservation No.: 2658835

Date: October 21, 2022

Time: 9:00 a.m.

Dept.: 25

Judge: Hon. Jill H. Talley

Filed: May 12, 2021

FAC Filed: August 31, 2021

Trial Date: None Set

1 I, Michael Uribe, 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 Defendant Ecoguard Pest Management, Inc. ("Defendant") from
6 approximately July 8, 2020 to February 23, 2021 as a non-exempt employee. I experienced the
7 practices of Defendant during my employment that I alleged were unlawful in the lawsuit, including the
8 following: failure to pay overtime, failure to provide accurate wage statements, failure to timely pay
9 final wages, failure to provide meal and rest periods or pay premiums in lieu thereof, unfair
10 competition, failure to reimburse expenses, failure to provide all paid sick time, failure to pay contract
11 wages, unlawful deductions, unlawful recording of phone calls, and violation of Labor Code section
12 558.

13 3. I have actively participated in the litigation of this case. I have given a detailed account
14 of all the facts related to my employment and the claims asserted in the Complaint. I provided
15 extensive documentation in support of the claims brought against Defendant including paystubs,
16 Defendant's policies, and other documents related to my work with Defendant and to the claims brought
17 in the class action. I met with and assisted my attorneys Galen T. Shimoda, Justin P. Rodriguez and
18 Brittany V. Berzin in understanding the documents and providing context for Defendant's employment
19 policies and payroll processes as they applied to me and how I believed they applied to Defendant's
20 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 Defendant 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 Shimoda & Rodriguez Law, PC. I asked questions when I

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

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

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

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

17 I declare under penalty of perjury under the laws of the State of California that the foregoing is
18 true and correct. Executed this 8 of August 2022 in Sacramento, California.

DocuSigned by:

Michael Uribe

F208E3363B9248C...

Michael Uribe

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Brittany V. Berzin (Cal. State Bar No. 325121)
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Facsimile: (916) 760-3733

Attorneys for Plaintiff MICHAEL URIBE
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

MICHAEL URIBE, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

ECOGUARD PEST MANAGEMENT, INC.,
a California Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 34-2021-00300650

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No.: 2658835

Date: October 21, 2022

Time: 9:00 a.m.

Dept.: 25

Judge: Hon. Jill H. Talley

Filed: May 12, 2021

FAC Filed: August 31, 2021

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement (“Motion”) in the
3 above referenced case came before this Court, on October 21, 2022 at 9:00 a.m., in Department 25
4 before the Honorable Jill H. Talley, presiding. Named Plaintiff Michael Uribe (“Plaintiff”) filed this
5 putative class action on May 12, 2021. The operative Complaint alleges that Defendant EcoGuard
6 Pest Management, Inc. (“Defendant”) failed to pay overtime, failed to provide accurate wage
7 statements, failed to timely pay final wages, failed to provide meal and rest periods or pay premiums
8 in lieu thereof, failed to reimburse expenses, failed to provide all paid sick time, engaged in unfair
9 competition, failed to pay contract wages, made unlawful deductions, unlawfully recorded phone calls,
10 and violated Labor Code section 558. Plaintiff has also alleged Defendant is liable for civil penalties
11 under the Private Attorneys General Act (“PAGA”) based on these violations. Plaintiff sought
12 attorneys’ fees and costs as part of this Action. Defendant denied all of Plaintiff’s claims and denied
13 that this case was appropriate for class or representative treatment. No class has been certified.

14 The parties have agreed to settle the class and PAGA claims. Defendant will provide monetary
15 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
16 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
17 (“Agreement”). Any capitalized terms herein shall have the same meaning as set forth in the
18 Agreement. The Court, having received and considered Plaintiff’s Motion for Preliminary Approval of
19 Class Action and PAGA Settlement, the declarations in support, the Agreement, the proposed Notice
20 of Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS
21 FOLLOWS:

22 **I. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
23 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

24 The Court finds that certification of the following class for settlement purposes only is
25 appropriate under the California Code of Civil Procedure and related case law:

26 All non-exempt employees who have worked, or continue to work, for
27 Defendant in California from May 12, 2017 up to May 2, 2022.

1 The Court recognizes that the foregoing definition is for Class Member identification purposes
2 only and is not intended to capture the claims at issue or limit or alter the released claims under the
3 Agreement.

4 The Court finds that Class Members meet the ascertainability and numerosity requirements since
5 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
6 the definition and the number of Class Members would make joinder impractical. The commonality and
7 predominance requirements are met for settlement purposes since there are questions of law and fact
8 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's
9 contentions that Defendant caused the violations outlined above by 1) failing to pay Plaintiff, Class
10 Members, and Aggrieved Employees for all hours worked; 2) failing to pay the correct regular rates of
11 pay due to failing to account for the value of commissions, bonuses, and different rates of pay being paid
12 within the same workweek; 3) failing to authorize and permit all meal and rest periods and failing to
13 keep track of whether employees took meal periods; 4) failing to reimburse employees for the use of
14 personal items for work, such as personal cellphones, car washes, and laundering their uniforms; 5)
15 failing to include the correct hourly rates and gross and net wages on wage statements issued to
16 employees; 6) requiring employees to enter into agreements with illegal terms; 7) failing to pay all paid
17 sick time; and 8) failing to notify employees that calls made from the RingCentral app were being
18 recorded. The PAGA, waiting time penalty, wage statement violation, and unfair competition claims
19 also derive from these violations. Additionally, Class Members seek the same remedies under state
20 law. The typicality requirement for settlement purposes is also satisfied since the claims of the Class
21 Representative are based on the same facts and legal theories as those applicable to the class members.

22 The Court also finds that preliminarily and conditionally certifying the settlement class is
23 required to avoid each Class Member from litigating similar claims individually. This settlement will
24 achieve economies of scale for Class Members with relatively small individual claims and conserve the
25 resources of the judicial system.

26 The Court finds that Plaintiff Michael Uribe and Plaintiff's counsel, Justin P. Rodriguez and
27 Brittany V. Berzin of Shimoda & Rodriguez Law, PC, to be adequate representatives of the settlement
28 class. The Court appoints them as Class Representative and Class Counsel, respectively.

II. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT

The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit A. The Court finds on a preliminary basis that the Agreement falls within the range of reasonableness of a settlement, which could ultimately be given final approval by this Court. The Court also acknowledges that Class Members may object to the settlement at a fairness hearing approved by this Court or opt-out of being bound by the preliminarily approved Agreement.

Because the Court finds the Parties' settlement to have been agreed upon only after an extensive investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court preliminarily approves the Agreement and all terms therein as if stated here in full, including the \$310,000 Gross Settlement Amount.

The Court orders that Plaintiff Michael Uribe will receive \$15,000 as a Class Representative Enhancement Payment in addition to any amount Plaintiff may be entitled to under the Agreement's pro rata distribution formula for Plaintiff's time and effort on behalf of Class Members.

The Court orders and approves ILYM Group, Inc. to act as the Claims Administrator in this case. The Claims Administrator will take its fees out of the Gross Settlement Amount, which are not to exceed \$10,000. Any difference between the actual cost of the Claims Administrator and the approved payment will be redistributed to Qualified Claimants on a pro-rata basis.

The Court finds that an award of fees under the common fund doctrine is appropriate in this case because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits can be accurately traced as set forth in the Agreement, Plaintiff and Class Counsel were able to negotiate on behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of thirty-five percent (35%) of the Gross Settlement Amount, *i.e.*, \$108,500, to be appropriate compensation for Class Counsel. The attorneys' fees request is within the range that has been approved by other Courts in similar cases and is reasonable in light of the circumstances of this case, the substantial and beneficial results obtained on behalf of Class Members, and the contingent nature of the

1 recovery over the course of this case, which included potential loss at summary judgment, certification,
2 and/or trial proceedings. Additionally, the Court orders that up to \$7,500 of the settlement proceeds will
3 be paid to Class Counsel for reasonable costs incurred in this case. Any difference between the actual
4 costs incurred and the \$7,500 shall be paid to the Qualified Claimants on a pro-rata basis.

5 The Court approves of the Ten Thousand (\$10,000) PAGA Payment, which shall be paid from
6 the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the alleged
7 PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and
8 Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to Aggrieved
9 Employees on a pro rata basis as described in the Agreement. The Court also finds that the Agreement
10 provides a recovery that creates an effective substantial deterrent to any potential future non-compliance,
11 furthering the purpose of the Labor Code and LWDA.

12 The Court approves of the identified plan wherein any checks issued to Qualified Claimants
13 and/or Aggrieved Employees that are not cashed by the deadline to do so shall escheat to the State of
14 California Unclaimed Property Fund to be held in the name of each expired check payee, pursuant to
15 applicable unclaimed property laws.

16 The releases and waivers for Class Members who do not opt out of being bound by the
17 Agreement (*i.e.*, Qualified Claimants), Aggrieved Employees, and the Class Representative are also
18 approved by the Court as set forth in the Agreement.

19 **III. APPROVAL OF DISTRIBUTION TO THE CLASS, THE NOTICE OF SETTLEMENT,**
20 **OPPORTUNITY TO OPT OUT OF, AND OBJECT TO, THE SETTLEMENT**

21 The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiff's
22 Motion as Exhibit F, fairly and adequately advises Class Members and Aggrieved Employees of the
23 terms of the Agreement, the rights being waived, their right to opt out, the ability to dispute the number
24 of workweeks worked during the Class Period, their pro rata share of the Net Settlement Amount, how
25 to participate in the settlement, how to file documentation in opposition to the proposed settlement, and
26 when to appear at the fairness hearing to be conducted on the date set forth below. The Court further
27 finds that the Notice of Settlement and proposed distribution of such notice by first class mail to each
28 identified Class Member and Aggrieved Employee at their most recent address based on a National

Change of Address database search from the Class Members' last known address and a skip trace on any Class Members who have the Notice of Settlement returned as "undeliverable" or "not at this address" comports with all constitutional requirements, including those of due process.

The Court also finds that because there is a strong interest in providing Class Members and Aggrieved Employees the opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to privacy rights, the sharing of employment information, including social security numbers, is not a serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide first and last name, last known mailing address, social security number, total number of workweeks during which the Class Member performed any actual work to the Claims Administrator only, and not to Plaintiff or Class Counsel, in order to process this settlement as contemplated within the Agreement and approved by this Order. The Claims Administrator shall only use this information for settlement purposes identified herein, and this information shall be kept confidential, not be shared with any third-party, and used only to administer the settlement.

IV. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

Last day for Defendant to provide Claims Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
Last day for Claims Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Defendant
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period

1 2 3 4 5	Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
6 7 8	Last day for Defendant to fund settlement	Within 21 calendar days after the Effective Date
9 10 11 12	Last day for Claims Administrator to deliver payment of Class Counsel's Attorney's Fees and Costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 7 calendar days after Defendant funds the settlement
13 14 15	Last day for Qualified Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Qualified Members and Aggrieved Employees
16 17 18	Last day for Claims Administrator to deliver value of uncashed settlement checks to the State of California Unclaimed Property Fund	Within 14 calendar days after settlement check cashing deadline
19	Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

FINAL APPROVAL AND HEARING

The Court hereby grants Plaintiff's Motion and sets final approval hearing on the proposed date of February 24, 2023 at 9:00 a.m. in Department 25, with briefs and supporting documentation to be submitted according to the California Code of Civil Procedure, in this Department. Class Members who object in a timely manner, and in the manner set forth in the Agreement, may appear and present such objections at the fairness hearing in person or by counsel.

If for any reason the Court does not grant final approval of the Agreement, all evidence and proceedings held in connection therewith shall be without prejudice to the status quo and rights of the parties to the litigation, including all challenges to personal jurisdiction and to class certification for any

purpose other than approving a settlement class. The parties will revert to their respective positions as if no settlement had been reached at all.

IT IS SO ORDERED.

Date: _____

By: _____
Judge of the Superior Court

Uribe v Ecoguard Pest Management, Inc.
Sacramento County Superior Court of California 34-2021-00300650

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

I, Estefania Rodriguez, declare that:

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

On September 26, 2022, I served the following documents on the party below:

- Notice of Motion and Motion for Preliminary Approval of Class and PAGA Settlement
- Memorandum of Points & Authorities In Support of Plaintiff's Motion for Preliminary Approval of Class and PAGA Settlement
- Declaration of Brittany V. Berzin In Support of Plaintiff's Motion for Preliminary Approval of Class and PAGA Settlement
- Declaration of Plaintiff Michael Uribe In Support of Motion for Preliminary Approval of Class and PAGA Settlement
- Exhibit List and Exhibits In Support of Plaintiff's Motion for Preliminary Approval of Class and PAGA Settlement
- [PROPOSED] Order Granting Plaintiff's Motion for Preliminary Approval of Class and PAGA Settlement

Coby Turner (SBN: 266298) Phillip J. Ebsworth (SBN 311026) Seyfarth Shaw LLP 400 Capitol Mall Ste. 2350 Sacramento, California 95814 Phone: (916) 448-0159 Facsimile: (916) 288-6333 Email: cturner@seyfarth.com pebsworth@seyfarth.com LNinelist@seyfarth.com	
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[] [By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Elk Grove, California, addressed as set forth above.

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

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

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

5 I declare under penalty of perjury under the laws of the State of California that the foregoing
6 is true and correct, and that this declaration was executed on September 26, 2022, at Elk
7 Grove, California.

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10 Estefania Rodriguez
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