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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.
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20
21
22
23

Case No. 34-2021-00300650

CLASS ACTION

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

Date: February 24, 2023

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

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 24, 2023, at 9:00 a.m., or as soon thereafter as the matter may be heard in Department 25 of the above-entitled Court, Plaintiff Michael Uribe, individually and on behalf of all other similarly situated individuals, hereby moves for entry of an Order for the following:

1. Certifying the proposed class herein for purposes of settlement only;
2. Appointing Plaintiff Michael Uribe as class representative for purposes of settlement only;
3. Appointing Shimoda & Rodriguez Law, PC, as Class Counsel for purposes of settlement only;
4. Approving the proposed total maximum gross class action settlement, in the amount of \$310,000, which is incorporated herein by reference;
5. Approving the application for payment to Class Counsel of attorneys' fees in the amount of 35% of the Gross Settlement Amount;
6. Approving the application for payment to Class Counsel of reasonable costs in the amount of \$7,150.54;
7. Approving the Class Representative Enhancement Payment of \$15,000 to Plaintiff Michael Uribe;
8. Approving the appointment of ILYM Group, Inc. as the Claims Administrator and for payment to ILYM Group, Inc. for administering said class action settlement in the amount of \$8,000.00;
9. Approving the settlement of claims under the Private Attorneys General Act for the total amount of \$10,000, 75% of which will be paid to the Labor and Workforce Development Agency and 25% of which will be paid to Aggrieved Employees;
10. Approving the procedures to notify the class and determining that the proposed notification procedures and process complied with Class Members' due process rights;
11. Directing that any residue from settlement checks that are not cashed by the check cashing deadline escheat to the State of California Unclaimed Property Fund to be held in the name of each expired check payee, pursuant to applicable unclaimed property laws;

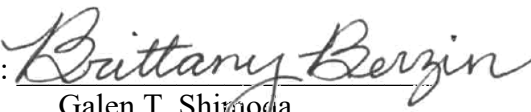
1 12. Approving and adopting the Proposed Order and its implementation schedule, which is filed
2 herewith and incorporated by reference.

3 This motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section
4 2699(l), and California Rule of Court 3.769 and 3.764, on the grounds that the proposed class action and
5 Private Attorneys General Act settlement is fair, reasonable, and adequate as to all Class Members and
6 Aggrieved Employees and should be given final approval by the Court. This motion will be based on
7 the notice of motion, memorandum of points and authorities, the Declaration of Brittany V. Berzin, the
8 Declaration of Michael Uribe, Declaration of Cassandra Polites, exhibits, the record and files of this
9 case, and any further oral or documentary evidence introduced at the hearing of this motion.

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

17 Dated: February 1, 2023

Shimoda & Rodriguez Law, PC

18 By: 
19 Galen T. Shimoda
20 Justin P. Rodriguez
21 Brittany V. Berzin
22 Attorneys for Plaintiff
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15 ECOGUARD PEST MANAGEMENT, INC.,
16 a California Corporation; and DOES 1 to 100,
inclusive,

17 Defendants.
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Case No. 34-2021-00300650

CLASS ACTION

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

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1 **I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT**

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

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

27 Defendant has denied all of Plaintiff’s allegations in their entirety and any liability or
28 wrongdoing of any kind. *See* Declaration of Brittany V. Berzin (“Decl. Berzin”), ¶ 5. Defendant has

1 denied that this case is appropriate for class certification or representative treatment, other than for
2 purposes of settlement, and that Plaintiff would have difficulty proving class certification or
3 representative treatment is proper here. *See id.* However, subject to final approval by the Court, the
4 parties have been able to compromise and settle all asserted claims as a result of extensive
5 investigations, informal document and data exchanges, and extended negotiations relating to all aspects
6 of the asserted claims. *See* Exhibit A. Plaintiff's counsel is convinced that the proposed settlement is in
7 the best interest of the putative class based on the discovery, investigations, negotiations, and a detailed
8 knowledge of the issues in this case. *See* Decl. Berzin, ¶¶ 3, 6-10.

9 The reaction of Class Members to the preliminarily approved Agreement has been
10 overwhelmingly positive, which gives substantial support to the Agreement, and all terms and
11 allocations therein, being fair, reasonable, and adequate. **Zero Class Members opted out of the**
12 **settlement and there have been zero objections to the Agreement.** *See* Declaration of Cassandra
13 Polites ("Decl. Polites"), ¶¶ 10-11. It is well within the discretion of this Court to grant final approval
14 of the Agreement. Accordingly, Plaintiff requests that the Court: (1) certify the settlement class; (2)
15 grant final approval of the Agreement; (3) find that the procedures used to notify Class Members
16 complied with due process; (4) grant Plaintiff's request for attorney's fees and costs, the Enhancement
17 Payment to the Class Representative, and Claims Administrator Costs; and (5) approve and adopt the
18 proposed order granting final approval, which is filed concurrently herewith.

19 II. PROCEDURAL AND LITIGATION HISTORY

20 Plaintiff filed a class action complaint on approximately May 12, 2021, in the Sacramento
21 County Superior Court against Defendant. Plaintiff exhausted administrative remedies under the PAGA
22 by providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code §
23 2699.3(a), (c); Decl. Berzin, ¶ 3. Then, Plaintiff filed a First Amended Class Action Complaint on
24 approximately August 31, 2021 to include a PAGA claim. *See id.*; Exhibit B. There is no date set for a
25 motion for certification or trial in this matter. *See* Decl. Berzin, ¶ 4.

26 III. INVESTIGATION AND DISCOVERY CONDUCTED

27 Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and
28 potential damages for such claims. *See id.* Plaintiff experienced the practices of Defendant that were

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

11 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

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

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

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

22 1. The following groups of individuals are covered by the Settlement (*See* Exhibit A, ¶¶ 1.2,
23 1.8, 1.9, 1.26): (1) Aggrieved Employees: all non-exempt employees who have worked, or continue to
24 work, for Defendant in California from April 28, 2020 up to May 2, 2022; and (2) Class Members: all
25 non-exempt employees who have worked, or continue to work, for Defendant in California from May
26 12, 2017 up to May 2, 2022.

27 2. Pay the Gross Settlement Amount of \$310,000, exclusive of the employer's share of
28 payroll taxes, to resolve and release the claims alleged in the Complaint. *See id.* at ¶¶ 5.1, 5.2.

Aggrieved Employees will still be paid their share of the PAGA Payment regardless of whether they opt out of being Class Members. *See id.* at 7.5.1.

3. Any prior non-compete agreements Defendant entered into with Class Members and Aggrieved Employees are void and unenforceable. *See id.* at ¶ 7.2. The notice sent out to Class Members stated this information. *See Decl. Polites, Exh. A.*

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

5. The parties agree that the cost of administering this class action settlement shall be paid from the settlement proceeds. Subject to Court approval, the parties have selected ILYM Group, Inc. to act as the Claims Administrator, whose final costs are \$8,000. *See Decl. Polites, ¶ 17.* The difference between the actual administration costs and the \$10,000 originally allocated under the Agreement will be added to the Net Settlement Amount and paid to Class Members on a pro rata basis. *See Exhibit A, ¶ 5.3.*

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. Given the risk to proving the claims on the merits, the derivative nature of the penalties, the efforts by Defendant to maintain compliant policies and take corrective action, the presence of what may likely be deemed good faith disputes, and the Court's discretion to reduce any penalty award, Plaintiff believes the \$10,000 PAGA Payment allocation represents a meaningful settlement aimed at deterring non-compliance given the facts of this case. *See Decl. Berzin, ¶¶ 9-10; see also Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims based on their being disputed and being part of a class settlement which was evaluated based on the terms of the agreement overall); *Davis v. Cox Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation

1 in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D.
2 Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*,
3 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000
4 settlement); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012)
5 (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*,
6 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement
7 fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011) (approving
8 PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

9 7. Defendant will not oppose any application for Plaintiff's attorneys' fees up to thirty-five
10 percent (35%) of the Gross Settlement Amount (\$108,500) incurred in the litigation of this case. *See id.*
11 at ¶ 5.2. Additionally, Defendant agreed not to oppose Plaintiff's request for reimbursement of actual
12 litigation costs as approved by the Court in the amount of \$7,150.54. *See* Exhibit D (Plaintiff's Itemized
13 Costs). The difference between the actual costs and the originally allocated \$7,500.00 will be
14 redistributed to Class Members on a pro rata basis. *See id.* The notice sent to Class Members stated the
15 maximum cost potential of \$7,500.00. *See* Decl. Polites, Exh. A.

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

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

24 **c. Allocation of Settlement Funds**

25 Payment to Qualified Claimants and Aggrieved Employees of their Claim Amount will not
26 require the submission of a claim form. A Net Settlement Amount will be determined by subtracting
27 from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, any
28 Enhancement Payment to the Class Representative, the Claims Administrator Costs, and the PAGA

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

9
10 **V. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND THE
SUBSEQUENT CLASS ACTION ADMINISTRATION**

11 Plaintiff's motion for preliminary approval of the class action settlement was approved by the
12 Court, in its entirety, on October 31, 2022. To comply with the class members' due process rights, the
13 parties enlisted an exhaustive method to ensure the best practical means possible was used to provide
14 notice to the class. The parties provided the class action administrator the names, last known address,
15 and social security numbers for the class. The class action administrator then updated this information
16 by doing an address trace for each individual using this information. *See* Decl. Polites, ¶¶ 5-6. If the
17 Notice Packets were returned as undeliverable, further investigation was performed and they were re-
18 mailed using updated information. *See id.* at ¶¶ 8-9. Of the 133 Notice Packets mailed, only 2 were
19 undeliverable after the use of these methods. *See id.* at ¶ 9. The Notice Packets included information
20 regarding the requested attorneys' fees, costs, payment to the LWDA, administration costs, and tax
21 allocations. *See* Decl. Polites, Exh. A.

22 The average distribution to participating class members is approximately \$1,213.15 and the
23 maximum distribution is approximately \$4,326.62. *See id.* at ¶ 15. No objections to the proposed
24 settlement have been received and no Class Members opted out. *See* Decl. Polites, ¶¶ 10-11.

25 It is not required that Class Members be given actual notice of a class settlement; instead, the
26 best practicable notice under the circumstances is all that is required. *See Silber v. Mabon*, 18 F.3d
27 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017);
28 *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991, at *12-14 (N.D. Cal. 2017); *Wright v.*

1 *Linkus Enters.*, 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In *Silber v. Mabon*, 18 F.3d 1449 (9th Cir.
2 1994), the Court rejected a class member's argument that he had not received due process because he
3 did not receive notice until after the opt out period, finding that, so long as the notice process utilized is
4 the best practicable under the circumstances, due process is satisfied even if there is no actual receipt of
5 the notice. See *Silber*, 18 F.3d at 1453-1454. A similar finding was made in *Briseno v. Conagra Foods*,
6 *Inc.*, 844 F.3d 1121 (9th Cir. 2017). With regard to any undeliverable Notice in this case, the Court in
7 *Rannis v. Recchia*, 380 F. App'x 646 (9th Cir. 2010) found that class members who did not receive
8 actual notice due to their mailings being deemed undeliverable were still properly held to be part of the
9 class settlement because they received the best notice practicable under the circumstances. See *Rannis*
10 *v. Recchia*, 380 F. App'x at 650-651. In *Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980-984 (2019), the
11 California Supreme Court noted that California has adopted a similar approach regarding providing
12 notice to class members.

13 The notice method in *Rannis* is similar to that used in the present case. For example, the Notice
14 contains all information necessary for a Class Member to assess the litigation, the settlement, and
15 whether they wanted to participate, object, or opt-out. See Decl. Polites, Exh. A. The Claims
16 Administrator utilized a national change of address database, forwarding notices, and skip tracing in an
17 effort to ensure that all reasonable means were exhausted in attempting to provide Class Members notice
18 of this settlement. See Decl. Polites, ¶¶ 5-8. Additionally, the entire motion for preliminary approval,
19 the Notice, and all filings in this matter were available, free of charge, on a web page accessible to all
20 Class Members. See *id.* at ¶ 3(i). The content of the notice provided and the manner in which it was
21 provided to Class Members was the best practicable notice to satisfy due process.

22 **VI. THE AGREEMENT WARRANTS FINAL APPROVAL AS IT IS FAIR, REASONABLE,**
23 **AND ADEQUATE AS TO ALL CLASS MEMBERS, PROVIDING AN EXCELLENT**
24 **RECOVERY UNDER THE FACTS OF THIS CASE**

25 A class action may not be dismissed, compromised, or settled without Court approval and the
26 decision to approve or reject a settlement is committed to the Court's sound discretion. See Cal. Rules
27 of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)¹; *Wershba v. Apple Computer, Inc.*, 91 Cal. App.

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

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).

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

The purpose of the Court’s final evaluation of a proposed class action settlement is to determine only whether the proposed settlement is within the range of reasonableness. *See Wershba*, 91 Cal. App. 4th at 234-35. If the Court finds a proposed settlement falls within “the range of reasonableness,” it should grant final approval of the class action settlement. *See, e.g., North County Contr. ’s Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90 (1994). To make the fairness determination, the Court must consider several factors, including:

the strength of the Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery 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.

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

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

3 Settlement in this case was reached only after litigation and extensive arm’s length negotiations
4 lasting nearly one year, which included a full day mediation with Russ J. Wunderli, Esq. *See Decl.*
5 Berzin, ¶¶ 6-10. At all times, the negotiations were adversarial and contentious, although still
6 professional in nature. *See id.* Further, while Plaintiff contends he would ultimately prevail on the
7 claims and the issue of certification and representative treatment, this is not a certainty and there is
8 substantial risk in proceeding to further litigation. *See id.* at ¶¶ 6-10. The ability to secure a guaranteed
9 settlement now and ensure Class Members and Aggrieved Employees receive some compensation,
10 rather than proceed to further litigation and potentially recover nothing, was a motivating factor in
11 reaching this settlement. *See id.*

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

14 The parties were in possession of all necessary information during the negotiations. The parties
15 engaged in substantial informal discovery and exchange of documents, including a representative
16 sampling of employee data, such as timecards, paystubs, payroll data and relevant policies for the
17 entirety of the statute of limitations applicable to the alleged claims, which covered all aspects of the
18 class and representative claims and helped thoroughly vet the extent of Plaintiff’s claims against
19 Defendant and create an accurate damages model. *See id.* at ¶ 6-10. Plaintiff was in possession of this
20 information prior to calculating the potential damages in this case. *See id.* As a result, Plaintiff was
21 able to make a reasonable estimation of Defendant’s potential liability. *See id.* For these reasons, the
22 settlement now before the Court was reached at a stage where “the parties certainly have a clear view of
23 the strengths and weaknesses of their cases” sufficient to support the settlement. *Boyd v. Bechtel Corp.*,
24 485 F.Supp. 610, 617 (N.D. Cal. 1979).

25 **iii. Plaintiff’s Counsel Are Experienced In Similar Litigation**

26 Plaintiff’s counsel has considerable experience in class and PAGA actions and wage and hour
27 litigation. Plaintiff’s counsel has brought and are currently bringing several wage and hour class and/or
28 PAGA actions. Thus, Plaintiff’s counsel are qualified to evaluate the class claims, value of settlement

1 versus moving for certification and going to trial, and the viability of possible affirmative defenses. *See*
2 Decl. Berzin, ¶¶ 11-20. Plaintiff’s counsel believes that the settlement is fair and reasonable in light of
3 the complexities of the case, the uncertainties of class certification and litigation, Defendant’s defenses
4 and contentions challenging the propriety of this action, such as arbitration agreements that could
5 preclude Class Members and Aggrieved Employees from participating in the action, and the secured
6 benefit to the class. *See id.* at ¶¶ 5-6.

7 **iv. No Class Members Objected or Opted Out**

8 The reaction by Class Members to the Agreement and all the terms and allocations stated
9 therein is overwhelmingly positive. Zero Class Members have objected to any aspect of the Agreement
10 and zero have opted out. *See* Decl. Polites, ¶¶ 10-11. This provides strong evidence that the settlement
11 is fair, reasonable, and adequate. *In re Heritage Bond Litig.*, 2005 WL 1594403, at *10 (“It is
12 established that the absence of a large number of objectors to a proposed class action settlement raises a
13 strong presumption that the terms of a proposed class settlement action are favorable to the class
14 members”); *Nat’l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal.
15 2004) (“That unanimous, positive reaction to the Proposed Settlement is compelling evidence that the
16 Proposed Settlement is fair, just, reasonable, and adequate”).

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

19 A review of the Agreement’s terms does not give rise to any doubts about its fairness. Based on
20 the records and facts of this case, Plaintiff has secured a gross recovery of approximately 23.1% and a
21 net recovery of approximately 12% of the claims’ maximum likely value. *See* Decl. Berzin, ¶¶ 9-10.
22 Additionally, the average net award per class member is approximately \$1,213.15 and the highest net
23 recovery is approximately \$4,326.62. *See* Decl. Polites, ¶ 15. This settlement is a reasonable
24 compromise of the class and PAGA claims and is within the percentile ranges of the total available
25 damages that have been approved in other class settlements. *See Wershba*, 91 Cal. App. 4th at 246,
26 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1990); *Officers for Justice v. Civil Serv.*
27 *Comm’n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re Omnivision Technologies, Inc.*, 559
28 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in settlement of 6% of maximum

1 potential recovery after reduction for attorney’s fees was higher than median percentage for recoveries
2 in shareholder class action settlements, averaging 2.2%-3% from 2000 through 2002); *Bravo v. Gale*
3 *Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) (approving a settlement where the net
4 recovery to class members was approximately 7.5% of the projected maximum recovery amount); *Avila*
5 *v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017): (approving a settlement
6 with a gross recovery of 11% of the projected maximum damages available and a net recovery of
7 approximately 6.7% of the projected maximum recovery); *Bellinghausen v. Tractor Supply Co.*, 306
8 F.R.D. 245 (N.D. Cal 2015) (approving a settlement where the gross recovery was approximately 8.5%
9 of the projected maximum recovery); *Schiller v. David’s Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at
10 *48 (E.D. Cal. 2012) (“Class Members will receive an average of approximately \$198.70, with the
11 highest payment to a Class Member being \$695.78 . . . Overall, the Court finds that the results achieved
12 are good, which is highlighted by the fact that there was no objection to the settlement amount or the
13 attorneys’ fees requested.”); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal.
14 2012) (“the results achieved in this case were very favorable. Class members are provided with
15 immediate monetary relief, with an average award of around several hundred dollars and a minimum
16 award of \$50”).

17 **vi. The Proposed Settlement is a Reasonable Compromise of Claims**

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

1 before the trial court was sufficient, having included the number of class members, payroll data,
2 declarations describing hours and overtime worked, as well as variances in duties and rest and meal
3 period experience, and a companion action alleging less than \$5,000,000 in damages. This information
4 constituted “an adequate basis from which to garner a reasonably adequate understanding of the amount
5 that is in controversy within the meaning of *Kullar*.” *Id.*

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

24 **vii. The Distribution Of Any Uncashed Checks To the State of California Unclaimed**
25 **Property Fund Is Appropriate**

26 Code of Civil Procedure section 384(b) provides for the payment of “unpaid residue” in class
27 actions to nonprofit organizations. However, section 384 is only applicable “when the parties have not
28 made other provisions for those funds.” *See In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 718, 722

1 (2006) (“Under our interpretation, the procedure of section 384, subdivision (b) does not apply to a
2 judgment approving a settlement agreement that includes its own provisions for distribution of any
3 unpaid residue.”) The legislative history for section 384 reveals that the legislature contemplated
4 attorneys, subject to court approval, would determine where to distribute any residue by including such a
5 provision in the class action settlement agreement. *See id.* at 720. Section 384 was enacted to apply
6 where the settlement agreement is silent regarding treatment of any residue and the court therefore must
7 make the decision as to the distribution. *See id.*

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

16 **b. Certification of the Class is Appropriate**

17 Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-
18 defined community of interest in the questions of law and fact involved affecting the parties to be
19 represented.” *Dunk*, 48 Cal. App. 4th at 1806. The “community of interest” element “embodies three
20 factors: (1) common questions of law or fact predominate; (2) class representatives with claims or
21 defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.*
22 Here, the Court conditionally certified the settlement class on October 31, 2022, and nothing has
23 happened in the interim that would warrant changing that decision. *See Garcia v. City of King City*,
24 2017 WL 363257, *4 (N.D. Cal. 2017); *Messineo v. Ocwen Loan Servicing, LLC*, 2017 WL 733219, *4
25 (N.D. Cal. 2017). Here, the parties agree that, for the purposes of settlement only, these prerequisites
26 are met. *See Exhibit A.*

27 //

28 //

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 133 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).

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

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

21 The common questions of law and fact in this case stem from Plaintiff's contention that
22 Defendant violated California law by 1) failing to pay Plaintiff, Class Members, and Aggrieved
23 Employees for all hours worked; 2) failing to pay the correct regular rates of pay due to failing to
24 account for the value of commissions, bonuses, and different rates of pay being paid within the same
25 workweek; 3) failing to authorize and permit all meal and rest periods and failing to keep track of
26 whether employees took meal periods; 4) failing to reimburse employees for the use of personal items
27

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

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

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

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

21 There is no conflict of interest between Plaintiff and Class Members. Plaintiff and Plaintiff's
22 counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class.
23 Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this case by
24 speaking with Plaintiff and reviewing substantial amounts of documents. Plaintiff's counsel thereafter
25 engaged Defendant's counsel in settlement discussions over the course of nearly one year. Moreover,
26 Plaintiff's counsel has experience defending and bringing wage and hour claims. Because Plaintiff's
27 counsel has vigorously pursued Plaintiff's and the Class Members' claims, the adequacy requirement is
28 met. *See generally* Decl. Berzin.

1 **VII. THE AMOUNTS REQUESTED FOR ATTORNEY’S FEES AND COSTS, AN**
2 **ENHANCEMENT PAYMENT TO THE CLASS REPRESENTATIVE, AND CLAIMS**
3 **ADMINISTRATOR COSTS ARE REASONABLE AND SHOULD BE APPROVED**

4 The Notice of Settlement sent to Class Members specifically identified the allocations for
5 attorney’s fees and costs, the Class Representative Enhancement Payment, and Claims Administrator
6 Costs. *See* Decl. Polites, Exh. A. The reaction of Class Members to these requested amounts provides
7 useful evidence of whether they are reasonable. *See In re Heritage Bond Litig.*, 2005 WL 1594403,
8 *21 (“The absence of objections or disapproval by class members to Class Counsel’s fee request further
9 supports finding the fee request reasonable”). As noted above, there were no objections raised to the
10 Agreement or any term or allocation therein whatsoever. *See* Decl. Polites, ¶¶ 10-11. In addition to
11 Class Members’ reactions supporting the requested amount, the facts and applicable case law also
12 support awarding these amounts in full.

13 An award of attorney’s fees should include compensation for all hours reasonably spent. *See*
14 *Ketchum v. Moses*, 24 Cal.4th 1122, 1133 (2001); *see also Hensley v. Eckerhart*, 461 U.S. 424, 431
15 (1983) (finding hours are reasonably spent if they are the kind normally billed to a fee-paying client).
16 California has not adopted any “benchmark” percentage utilized by several federal courts. *See Emmons*
17 *v. Quest Diagnostics Clinical Lab’ys, Inc.*, 2017 WL 749018, at *7 (E.D. Cal. 2017) (“Notably, while
18 the California Supreme Court recognized the Ninth Circuit’s 25 percent benchmark for percentage
19 awards in common fund cases, it did not adopt such a benchmark for California cases”). Instead, “[t]he
20 benchmark in determining attorney fees is reasonableness.” *Karton v. Ari Design & Constr., Inc.*, 61
21 Cal.App.5th 734, 744 (2021).

22 **a. A Fee of Thirty-Five Percent of the Common Fund Is Reasonable Because It Is Within**
23 **the Ranges Historically Approved by Courts in Class Settlements and a Lodestar**
24 **Cross Check Validates the Proposed Fee**

25 An award of attorney’s fees under the common fund doctrine is appropriate in this case as there
26 is a sufficiently identifiable class of beneficiaries (*e.g.* the settlement class), the benefits received can be
27 accurately traced to the settlement Plaintiff and Class Counsel were able to negotiate on behalf of Class
28 Members, and the fee can be shifted with exactitude to those benefiting as the fee request is a specific,
lump-sum percentage of the fund. *See Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016);
Paul, Johnson, Alston & Hunt v. Gaulty, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van*

1 *Gemert*, 444 U.S. 472, 477-478 (1980) (“A lawyer who recovers a common fund for the benefit of
2 persons other than . . . her client is entitled to a reasonable attorney’s fee from the fund as a whole.”).
3 The requested fee, 35% of the common fund, is within ranges awarded in other cases. *See Martin v.*
4 *Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting cases); *Birch v.*
5 *Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a
6 \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern
7 District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class
8 action settlement); Decl. Berzin, ¶ 22; Exhibit G (Sacramento County Superior Court November 2022
9 Order) (awarding 35% of a common fund class action settlement).

10 To the extent there may be some Courts that have granted fees at a percentage less than 35%,
11 that does not justify an arbitrary cap on Class Counsel’s fees in this case. First, in many instances, the
12 treatises or cases discussing these percentages are relying on federal decisions guided by a
13 “benchmark” percentage of 25% that has not been adopted by the California Supreme Court. *See*
14 *Emmons*, 2017 WL 749018, at *7. This artificially lowers the average percentage of fees awarded.
15 Second, many of the same decisions and treatises refer to cases that have a substantial gross settlement
16 fund to begin with, which will generally correspond to a lower percentage of fees being deemed
17 reasonable. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052 (9th Cir. 2002) (compiling an
18 appendix of class settlements with gross settlement funds of \$53 million to \$193 million and a range of
19 2.8% to 40% in awarded attorney’s fees, averaging approximately 22%). Rather than acting as a cap on
20 any fee, the percentages applied in cases are a tool to cross check the reasonableness of the fee just as
21 the lodestar method is a tool to cross check the reasonableness of the requested percentage. *See Karton*,
22 61 Cal.App.5th at 744; *Vizcaino*, 290 F.3d at 1048 (“courts cannot rationally apply any particular
23 percentage—whether 13.6 percent, 25 percent or any other number—in the abstract, without reference
24 to all the circumstances of the case”).

25 To the extent the Court wishes to exercise its discretion to conduct a lodestar cross check, the
26 cross check only validates the fee request. *See Laffitte*, 1 Cal.5th at 503-506. Again, an award of
27 attorney’s fees should include compensation for all hours reasonably spent. *See Ketchum*, 24 Cal.4th at
28 1133; *see also Hensley*, 461 U.S. at 431 (finding hours are reasonably spent if they are the kind

1 normally billed to a fee-paying client). To date, Class Counsel has spent approximately 257.8 hours
2 performing tasks that would normally be billed to any fee playing client in complex litigation and
3 estimate that this number will increase to approximately 267.8 after monitoring the disbursement of all
4 funds and compliance hearing(s). *See* Decl. Berzin, ¶ 22; Exhibit F; *Syers Props. III, Inc. v. Rankin*,
5 226 Cal.App.4th 691, 699 (2014) (“Because time records are not required under California law ... ,
6 there is no required level of detail that counsel must achieve.”) (internal quotations omitted).
7 At the prevailing market rates for Class Counsel’s level of experience and this type of complex
8 litigation, this equates to a lodestar of approximately \$139,845.00. *See* Decl. Berzin, ¶¶ 22-23; Exhibit
9 G; *Children’s Hosp. and Med. Ctr. v. Bonta*, 97 Cal.App.4th 740, 746 (2002) (noting rates were
10 reasonable where they were “within the range of reasonable rates charged by and judicially awarded
11 comparable attorneys for comparable work”).

12 The reasonableness of Class Counsel’s fee request is also demonstrated by the fact that the
13 amount requested would not require any multiplier of the lodestar. Multipliers are typically awarded in
14 contingent fee litigation to compensate counsel for the risk of non-payment:

15 It is an established practice in the private legal market to reward attorneys
16 for taking the risk of non-payment by paying them a premium over their
17 normal hourly rates for winning contingency cases. *See Richard Posner,*
18 *Economic Analysis of Law* § 21.9, at 534-35 (3d ed. 1986). Contingent
19 fees that may far exceed the market value of the services if rendered on a
non-contingent basis are accepted in the legal profession as a legitimate
way of assuring competent representation for Plaintiff who could not
afford to pay on an hourly basis regardless whether they win or lose.

20 *Chem. Bank v. City of Seattle (In re Wash. Pub. Power Supply Sys. Sec. Litig.)*, 19 F.3d 1291, 1299 (9th
21 Cir. 1994). Moreover, “in the common fund context, attorneys whose compensation depends on their
22 winning the case, must make up in compensation in the cases they win for the lack of compensation in
23 the cases they lose.” *Id.* at 1300-01; *see also Ketchum*, 24 Cal.4th at 1138 (“The adjustment to the
24 lodestar figure, *e.g.*, to provide a fee enhancement reflecting the risk that the attorney will not receive
25 payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither
26 unexpected nor fortuitous”); *Wershba*, 91 Cal.App.4th at 255 (“Multipliers can range from 2 to 4 or
27 even higher”). Yet, Class Counsel’s requested fee of \$108,500.00 would actually result in a negative
28

multiplier. As a result, a lodestar cross check validates the common fund percentage requested and the Court should grant Plaintiffs' Counsel's fee request. *See* Decl. Berzin, ¶¶ 22-24.

b. Class Counsel's Expenses and Costs Were Necessarily Incurred to Achieve the Benefit Obtained

The appropriate analysis in determining whether particular costs are compensable is whether they are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) ("Harris may recover as part of the award of attorney's fees those out-of pocket expenses that 'would normally be charged to a fee paying client'"); *Abrams v. Lightolier, Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995); *Bratcher v. Bray-Doyle Indep. Sch. Dist. No. 42*, 8 F.3d 722, 725-26 (10th Cir. 1993). The categories of expenses for which Class Counsel seek reimbursement here are categories normally charged to hourly clients and, therefore, should be reimbursed out of the common fund. *See* Decl. Berzin, ¶ 24; Exhibit D.

c. Class Counsel's Request for A Class Representative Enhancement Payment Is Justified In Light of The Results Achieved for the Class

A service payment to a named plaintiff is intended to recognize their time and effort on behalf of the class. Indeed, courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation. *See Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001). In *Ingram*, the Court approved incentive awards of \$300,000.00 to each named Plaintiff in recognition of the services they provided to the class by responding to discovery, participating in the mediation process, and taking the risk of stepping forward on behalf of the class. *See id.* at 694; *see also Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00 participation award); *Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380, 1393 (2010) (approving \$10,000 awards to each of the four (4) named plaintiffs); *See* Exhibit G (awarding class representative enhancement payments of \$15,000).

In this case Plaintiff provided substantial support in helping to secure payment to Class Members. Plaintiff provided and explained a substantial number of documents critical to helping establish important facts central to this case and participated in substantial amount of informal

discovery. *See* Decl. Uribe, ¶¶ 3-6. Plaintiff is also subject to a much broader release of claims than Class Members, including a Civil Code section 1542 release. *See* Decl. Uribe, ¶ 8. Payment of \$15,000.00 to Plaintiff is appropriate given the risk, assistance, time required, and burden experienced in bringing and resolving this case, especially since this amount was identified in the Notice of Settlement and no objections to it have been received. *See West v. Circle K Stores, Inc.*, 2006 U.S. Dist. LEXIS 76558, at *7-*8, *12, *27 (E.D. Cal. 2006) (awarding a \$15,000 representative enhancement where 10,000 class members were to receive a gross award of approximately \$500 each from the \$5,000,000 settlement); *Dent v. ITC Serv. Croup*, 2013 U.S. Dist. LEXIS 139359, at *9-*10, *15-*16 (D. Nev. 2013) (awarding a \$15,000 representative enhancement out of a \$150,000 settlement for approximately 530 class members).

d. The Court Should Approve the Payment of Claims Administrator Costs

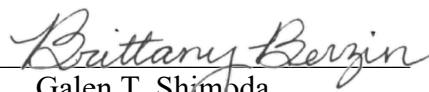
Since being preliminarily approved as the Claims Administrator, ILYM Group, Inc., has carried out its duties as set forth in the Court's order and the Agreement. *See generally* *See* Decl. Polites. Under the Agreement, a maximum of \$10,000.00 was set aside for potential Claims Administrator Costs. ILYM Group, Inc.'s final costs are \$8,000.00, well under the potential maximum Class Members were given notice of. Plaintiff requests that the Court approve payment to the Claims Administrator in the amount of \$8,000.00 to compensate it for the costs of administration as part of the final order approving the Settlement.

VIII. CONCLUSION

Plaintiff respectfully requests that this Court certify the class for settlement purposes; grant final approval of the proposed settlement, including awarding the amounts requested for the Class Representative Enhancement Payment, Class Counsel's attorney's fees and costs, and the Claims Administrator costs; and approve proposed order submitted concurrently herewith.

Dated: February 1, 2023

Shimoda & Rodriguez Law, PC

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

Galen T. Shimoda (Cal. State Bar No. 226752)
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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

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

Date: February 24, 2023

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	Plaintiff's Itemized Costs
E	Proof of Submission of Proposed Settlement Agreement to LWDA
F	Summary Chart of Attorney Hours
G	November 2022 Sacramento Superior Court Order

Dated: February 1 2023

Shimoda & Rodriguez Law, PC

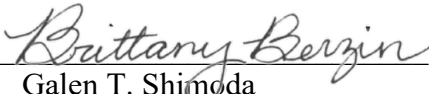
By: 
 Galen T. Shimoda
 Justin P. Rodriguez
 Brittany V. Berzin
 Attorneys for Plaintiff

EXHIBIT A

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17 Attorneys for ECOGUARD PEST MANAGEMENT, INC.

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**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,

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.

1 3.2 Defendant has denied all claims as to liability, damages, liquidated damages, penalties,
2 interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant
3 has agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or
4 the Final Approval Date does not occur, Defendant does not waive, but rather expressly reserve, all rights
5 to challenge all such claims and allegations in the Action upon all procedural and factual grounds,
6 including, without limitation, the ability to challenge class, collective, or representative treatment on any
7 grounds, as well as to assert any and all other potential defenses or privileges.

8 3.3 If the Court awards a lower Enhancement Payment, amount of Claims Administrator
9 Costs, or amount of Class Counsel's Attorneys' Fees and Costs, the other terms of this Agreement shall
10 apply. The Enhancement Payment, amount of Claims Administrator Costs, and amount of Class Counsel's
11 Attorneys' Fees Costs are not material terms of this Agreement and the award of any of these items at less
12 than requested by Plaintiff does not give rise to a basis to abrogate this Agreement.

13 **4. SCOPE OF THE AGREEMENT**

14 4.1 The scope of the class of individuals encompassed under the Agreement, who are entitled
15 to all benefits as authorized under the Agreement and subject to all obligations and duties required under
16 the Agreement, shall include all Class Members as defined in Section 1.9 and all Aggrieved Employees
17 as defined in Section 1.2. However, it shall not include any Class Members who submit valid and timely
18 requests to opt-out of the Agreement and settlement, as set forth in Section 7.5.1.

19 4.2 Individuals entitled to recover under this Agreement will include only those individuals
20 who are identified as being within the scope of this Agreement under Section 4.1.

21 4.3 Any person who believes that they are a Class Member or Aggrieved Employee and wishes
22 to participate in the Agreement, but did not receive a Notice of Settlement because their name did not
23 appear on the class list provided to the Claims Administrator prior to mailing, may submit a data request
24 to the Claims Administrator. The data request must contain all of the following information: (a) the full
25 name and, if applicable, Social Security Number of the individual making the request; (b) the name used
26 by such employee as of the time their employment with Defendant ended; (c) the years during which such
27 employee was employed with Defendant; and (d) a return address to which a response may be sent. Every
28 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

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

5 5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of
6 35% of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount.
7 Defendant has agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not
8 exceed the 35% threshold. Class Counsel will also be entitled to reimbursement for advanced litigation
9 expenses not to exceed \$7,500, which shall be paid from the Gross Settlement Amount. Defendant has
10 agreed to not oppose Class Counsel's request for reimbursement for advanced litigation expenses so
11 long as they do not exceed the \$7,500 threshold. The Claims Administrator will issue Class Counsel an
12 IRS Form 1099 for the attorneys' fees and costs paid under this Agreement. Class Counsel shall be
13 solely and legally responsible for correctly characterizing this compensation for tax purposes and for
14 paying any taxes on the amounts received. The Court's approval of Attorneys' Fees and Costs requested
15 by Class Counsel is not a material term of the Settlement. If the Court does not approve or approves only
16 a lesser amount than that requested by Class Counsel for Attorneys' Fees and Costs, the other terms of
17 the Settlement shall still apply. The Court's refusal to approve the Attorneys' Fees and Costs award
18 requested by Class Counsel does not give Plaintiff or Class Counsel any basis to abrogate the
19 Settlement. In the event that the Court awards less than the requested attorney's fees and/or costs, the
20 portion of the requested amounts not awarded to Class Counsel shall be added to the Net Settlement
21 Amount to be distributed to Qualified Claimants on a pro rata basis.

22 5.3 Claims Administrator Costs: The Claims Administrator Costs shall be paid from the Gross
23 Settlement Amount and shall not exceed \$10,000. The difference between any actual costs and the
24 allocated \$10,000 shall be added to the Net Settlement Amount to be distributed to Qualified Claimants
25 on a pro rata basis.

26 5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for
27 an Enhancement Payment to the Class Representative in an amount not to exceed \$15,000 to
28

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

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

4 5.11 No Additional Contribution by Defendant: Defendant's monetary obligation under this
5 Agreement is limited to the Gross Settlement Amount and any employer side payroll taxes owed on
6 amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in
7 connection with the performance of this Agreement shall be paid from the Gross Settlement Amount,
8 unless expressly provided otherwise herein. However, in the event this Agreement is deemed null and
9 void as described in Section 3 because the Court, in its independent determination, finds that the
10 Agreement does not meet the standards for settlement approval, then Defendant and Plaintiff shall be
11 equally responsible for the costs of the Claims Administrator incurred between the date the Agreement
12 was executed and the date of such event.

13 5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement
14 only, certification of the class as defined in Section 1.9 and 4.1 is appropriate and the requisites for
15 establishing class certification have been met and are met.

16 5.13 Adequacy of Class Counsel and Class Representatives: The Parties agree that, for purposes
17 of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and
18 Aggrieved Employees.

19 **6. RELEASE**

20 6.1 Release of Claims by Qualified Claimants: Upon the Effective Date, all Qualified
21 Claimants will be deemed to fully, finally and forever release the Released Parties from all Qualified
22 Claimant's Released Claims. Qualified Claimant's acknowledge that they may hereafter discover facts
23 or law different from, or in addition to, the facts or law they know or believe to exist with respect to a
24 released claim. Qualified Claimant's nonetheless acknowledge that this Agreement and their releases
25 shall be and shall remain effective in all respects notwithstanding such different or additional facts or
26 law regarding such released claims. In addition, on the Effective Date, all Qualified Claimants and their
27 successors in interest will be permanently enjoined and forever barred from prosecuting any of Qualified
28 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

1 2 3 4	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
5 6 7	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
8 9 10	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
11 12	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
F70BE383B924BC

Michael Uribe

17
18 **For Defendant:**

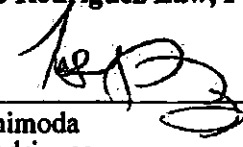
19 Date: _____

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
Justin P. Rodriguez
Brittany V. Berzin
28 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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5 the benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

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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.

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: _____

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

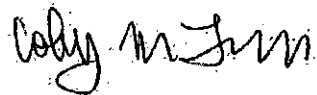
25
26 Dated: _____

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

1
2 APPROVED AS TO FORM

SEYFARTH SHAW LLP

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 _____ (the "Class Members"), and/or from April 28, 2020, to _____ (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 _____, 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 _____ weeks during the applicable Class Period (as defined below), which means your share of the settlement proceeds is estimated to be _____, and your share of the PAGA payment is estimated to be _____. 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 _____ (the "Class Period"), and the PAGA Period is April 28, 2020, to _____ (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 _____. 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 _____. 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 _____. If you submit a request to opt out which is not postmarked by _____, 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 _____. 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

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)
4 Shimoda Law Corp.
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff MICHAEL URIBE

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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 §

1 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19
2 (2005).

3 **PARTIES**

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

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

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

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

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

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

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

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CLASS ALLEGATIONS

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

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

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

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

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

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

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

- (1) Whether Defendants had a policy or practice to incorporate the value of bonuses and other nondiscretionary remuneration into Plaintiff's and putative class 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.

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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.

23. Defendants failed to provide Plaintiff and similarly situated 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.

24. At the time of Plaintiff's and similarly situated employees' termination or separation, Plaintiff and similarly situated 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 similarly situated employees these wages they are owed.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
. (As to all Defendants)

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

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

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

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

29. 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.

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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

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

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

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

26 **FIFTH CAUSE OF ACTION**
27 **WAITING TIME PENALTIES**
28 **(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.

11

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.

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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;

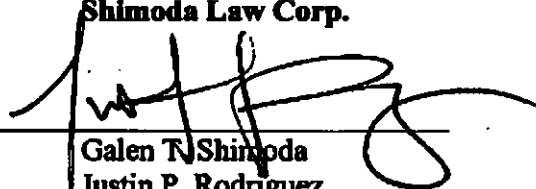
c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;

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

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

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

5 I, Erika F. Collazo, declare that:

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

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

- 9 • First Amended Complaint for Damages

10 Coby Turner (SBN: 266298)
11 Seyfarth Shaw LLP
12 400 Capitol Mall Ste. 2350
13 Sacramento, California 95814
14 Phone: (916) 448-0159
15 Facsimile: (916) 288-6333
16 Email: cturner@seyfarth.com

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

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

28 [] [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 of 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)

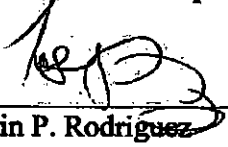
Labor Code section 221 states that "[it] shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." Labor Code section 223 prohibits employers from paying an employee less than a contractually obligated amount. As stated 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.

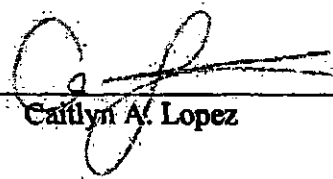
23 
24 Caitlyn A. Lopez
25
26
27
28

EXHIBIT D

Entered	Description	Amount
4/28/21	Payment to LWDA - PAGA Filing Fee	\$75.00
4/28/21	Postage - Certified Mailing PAGA Letters	\$8.62
5/1/21	Administration/Copy Fee - Class Action - Phone, Fax, Scan, Copying, Non-Certified/Courier Postage, Lexis Legal Research Fees	\$500.00
5/12/21	Service Fee to Court - Complaint	\$40.00
5/12/21	Payment to Court - Complaint Fee Superior Court	\$435.00
6/21/21	Payment to Court - Complex Fees	\$1,000.00
7/1/21	Service Fee to Court - Proof of Service of Summons	\$40.00
8/30/21	Service Fee to Court - First Amended Complaint	\$40.00
9/24/21	Postage - Discovery to opposing counsel	\$7.40
12/13/21	Payment for Records - PRA Documents	\$3.99
1/3/22	Mediation - Mediation fee	\$3,250.00
2/2/22	Service Fee to Court - Joint Case Management Conference Statement and Jury Fees	\$40.00
2/2/22	Payment to Court - Jury Fees	\$150.00
3/3/22	Parking - Mediation	\$24.35
3/8/22	Mediation - Additional Session Time	\$600.00
7/5/22	Service Fee to Court - Joint CMC Statement	\$40.00
9/27/22	One Legal Filing Fee - Preliminary Approval Motion	\$294.92
9/27/22	Payment to Court - Preliminary Approval Motion	\$60.00
12/28/22	One Legal Filing Fee - Joint CMC Statement	\$61.26
Anticipated	Payment to Court - Final Approval Motion	\$60.00
Anticipated	One Legal Service Fee - Final Approval Motion	\$300.00
Anticipated	Personal Service to OC - Final Approval Motion	\$80.00
Anticipated	One Legal Service Fee - Compliance Declarations to Court	\$40.00
		\$7,150.54

EXHIBIT E

EXHIBIT F

<u>TASK CATEGORY</u>	<u>Galen Shimoda</u>	<u>Justin Rodriguez</u>	<u>Brittany Berzin</u>
Pre-filing investigation, Pleadings, Admin Exhaustion. Includes time spent speaking with potential client. Initial client meeting and review of claims and documents, pre-filing investigation/research. Public record searches and review of public record documents. Drafting pleadings, tolling agreements, stipulations, administrative filings and court filings and communications with opposing counsel regarding same regarding same, internal communications regarding same (email or otherwise), communications with client regarding same.	6.2	17.7	19
Case Review, Management, Strategy Meetings. Includes time spent discussing general plan of action updates and strategies in weekly meetings, research and analysis regarding claims, case management conferences and related meet/confer, drafting of statements, and attendance for hearings. Communications with opposing counsel regarding same, communications with client regarding same.	9.6	14.5	7.2
Discovery (Non-Mediation Related). Includes time spent preparing discovery requests, Belaire Notices, Protective Orders, and meet and confer efforts. Communicate with client regarding same, communicate with opposing counsel regarding same. Includes legal research regarding same.	.5	5.3	6.7
Discovery / Investigation for Mediation. Includes time spent preparing informal/formal discovery specifically geared towards mediation, reviewing witness information, reviewing informal mediation productions, including data, analyses, documents, public records, working with expert to analyze sample, and communications with client and opposing counsel regarding same.	2.8	17.8	24.3
Mediation / Settlement Conference. Includes time spent drafting mediation brief and accompanying exhibits, prepare for and attending mediation, drafting damages analysis, drafting notes for mediation, communications with client and mediator, communications with opposing counsel regarding same, solicit bids from settlement administrators, prepare MOU. Includes legal research relating to issues on day of mediation.	1.0	15.8	43.2
Drafting Settlement Agreements. Includes time spent preparing long form agreements and exhibits, revisions relating thereto, research regarding any approval procedures or issues regarding disputed terms. Communicating with client regarding same, communicating with opposing counsel regarding same.	1.1	10.9	9.7
Settlement Approval and Administration. Includes time spent drafting motion for preliminary approval and supporting declarations and order, class data review, speaking with Settlement Administrator regarding calculations and distributions, analyze calculations and estimated disbursements, review notice updates and class member responses, drafting motion for final approval and supporting declarations and order, communicate with opposing counsel regarding same, communicate with client regarding same. Includes 10 hours for Brittany Berzin supervising final distributions and compliance with Court final approval order and compliance hearings	2.3	12.9	39.3
Total Per Billing Party:	23.5	94.9	149.4

EXHIBIT G

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5 Attorneys for Plaintiff BRIAN STRAWN

6 [additional parties continued on next page]

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

11 BRIAN STRAWN, ESTABAN ESTRADA,
ADRIAN PULIDO, DOMINADOR DUAZ,
12 BRANDON NELSON and MATTHEW
13 FARWELL, on behalf of themselves and all
other similarly situated aggrieved employees,

14 Plaintiffs,

15
16 vs.

17 BRIDGESTONE RETAIL OPERATIONS,
LLC, a Delaware Limited Liability Company;
18 BRIDGESTONE AMERICAS, INC., a
19 Nevada Corporation;
GORDON KNAPP, an individual;
20 CHRISTOPHER NICASTRO, an individual;
21 AMANDA MATHIS, an individual;
MICHELLE ALMANDIGER, an individual;
22 WILLIAM THOMPSON, an individual;
DAMIEN HARMON, an individual;
23 ERIC TURNER, an individual; and
DOES 1 to 100, inclusive,

24
25 Defendants.
26
27
28

Case No. 34-2018-00242049

CLASS ACTION

Assigned to the Honorable Jill H. Talley for all purposes

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: November 15, 2022

Time: 1:30 p.m.

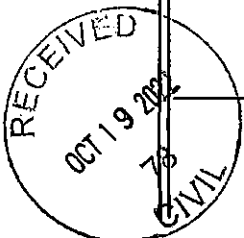
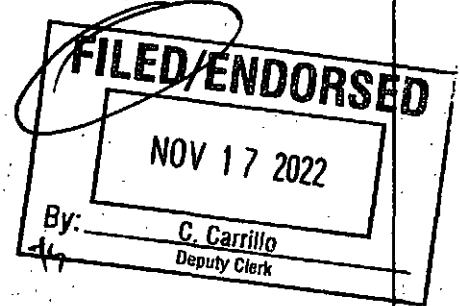
Dept.: 25

Judge: Hon. Jill H. Talley

Filed: October 5, 2018

FAC Filed: April 21, 2022

Trial Date: None Set



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Attorneys for Plaintiffs BRANDON NELSON and MATTHEW FARWELL

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 Plaintiffs' Motion for Final Approval of Class Action and PAGA Settlement came on for
3 regularly noticed hearing on November 15, 2022, before the Hon. Jill H. Talley, in Department 25 of
4 the above-entitled Court, as set forth in the Parties' Stipulation of Class Action Settlement and Release
5 ("Settlement Agreement"). Having considered the Parties' Settlement Agreement, Notice of Class
6 Action Settlement, and Memorandum of Points and Authorities filed in Support of the Unopposed
7 Motion for Final Approval of Class Action Settlement, the arguments and discussion of counsel for the
8 respective parties, the documents submitted in support therewith including, without limitation, the
9 Declarations submitted by the Parties and the Claims Administrator, as well as all supporting legal
10 authorities and documents filed herein, and having conducted an inquiry pursuant to California Rules of
11 Court, rule 3.769(g), including an inquiry into the notice to the Class, and good cause appearing therefor,
12 the court now finds and **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS**
13 **FOLLOWS:**

14 1. The Court, for purposes of this Final Judgment and Order ("Judgment"), adopts all
15 defined terms (i.e., terms with initial capitalization) as set forth in the Parties' Settlement Agreement.

16 2. The Court has jurisdiction over the subject matter over this Action, the Class Members,
17 the Named Plaintiffs, and Defendant.

18 3. The Court finds that the distribution of the Notice to Class Members, as provided for in
19 the Order Granting Preliminary Approval for the Settlement and as detailed in the Declaration of Lluvia
20 Islas of ILYM Group, Inc., constituted the best notice practicable under the circumstances to all Class
21 Members and fully met the requirements of California law and due process under the California and
22 United States Constitution. Based on evidence and other material submitted in conjunction with the
23 Preliminary and Final Approval Hearings, the actual notice to the class was adequate in all respects.

24 4. The Court finds that the instant Action presented a good faith dispute over unpaid wage
25 claims and reimbursement of business expenses and other relief, and the Court finds in favor of
26 settlement approval.

27 5. The Court approves the Settlement of the above-captioned action, as set forth in the
28 Settlement Agreement and each of the releases and other terms, as fair, just, reasonable, and adequate.

1 The Parties to the Settlement Agreement are directed to perform in accordance with the terms set forth
2 in the Settlement Agreement.

3 6. The Parties are to bear their own costs, except as otherwise provided in the Settlement
4 Agreement.

5 7. For purposes of effectuating this Judgment, this Court has certified a class of all
6 Settlement Class Members defined as follows: All current and former non-exempt employees who have
7 worked, or continue to work, for defendant Bridgestone Retail Operations, LLC in California from July
8 31, 2017 through July 21, 2022, who did not Opt-Out (collectively referred to as "Settlement Class").
9 The Court deems this definition sufficient for purposes of California Rules of Court, rule 3.765(a). Five
10 (5) Class Members submitted timely Opt-Out Requests to the class action portion of the Settlement
11 Agreement, including Chan Le, Charles Rivera, David Contizano, Ivan Perez, and Miguel A. Martinez.
12 These individuals will remain as PAGA Members under the terms of the Settlement Agreement, will
13 still receive their pro rata share of the PAGA Penalty Payment, and will still be subject to, and bound by,
14 the release of claims brought under the Private Attorneys General Act ("PAGA") in any of the Actions
15 or that could have been brought in any of the Actions based on the facts alleged therein. However, these
16 individuals will not be paid any portion of the Net Settlement Amount outside of their pro rata share of
17 the PAGA Penalty Payment.

18 8. With respect to the Settlement Class and for purposes of approving this Settlement, this
19 Court finds and concludes as follows: (a) the Class Members are ascertainable and so numerous that
20 joinder of all members is impracticable; (b) there are questions of law or fact common to the Settlement
21 Class Members, and there is a well-defined community of interest among the Settlement Class Members
22 with respect to the subject matter of the Action; (c) the claims of the Named Plaintiffs are typical of the
23 claims of the Class Members; (d) the Named Plaintiffs have fairly and adequately protected the interests
24 of the Class Members; (e) a class action is superior to other available methods for an efficient
25 adjudication of this controversy; and (f) the counsel of record for the Named Plaintiffs, *i.e.*, Class
26 Counsel, are qualified to serve as counsel for the Plaintiffs in their individual and representative
27 capacity, as well as for the Settlement Class.
28

1 9. By this Judgment, each of the Settlement Class Members shall be deemed to have, and by
2 operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged
3 all Released Claims, as defined in the Settlement Agreement. Specifically, the Settlement fully releases
4 and discharges Bridgestone Retail Operations, LLC and each of its former and present parents,
5 subsidiaries, affiliates, officers, directors, operators, principals, owners, heirs, representatives,
6 accountants, auditors, consultants, insurers and reinsurers, employees, partners, shareholders, members,
7 divisions, fiduciaries, trustees, agents, attorneys, investors, benefit plans, other successors and
8 predecessors in interest, assigns or legal representatives (including the parties named in the original
9 Complaint filed by Strawn on October 5, 2018: Bridgestone Americas, Inc., Gordon Knapp,
10 Christopher Nicastro, Amanda Mathis, Michelle Almandinger, William Thompson, Damien Harmon,
11 Eric Turner) of any all past, present and future claims, administrative or otherwise, actions, causes of
12 action, rights, or liabilities, up to July 21, 2022, whether known or unknown, whether in law or equity,
13 which were asserted or which could have been asserted based on the factual allegations in this Action,
14 including claims based on or arising out of the following categories of claims and allegations: (1) all
15 claims for unpaid wages, including any type of regular wages, minimum wages, overtime wages or an
16 overtime premium on non-hourly compensation, including bonus, SPIFF or other incentive pay, in
17 accordance with California state or federal law; (2) all claims for liquidated damages; (3) all claims
18 related to the provision or maintenance of tools, including any claim for two times the minimum wage
19 under the wage orders and indemnification under *Labor Code* Section 2802; (4) all claims for failure to
20 indemnify employees for hand tools, equipment (including personal safety equipment such as gloves and
21 glasses), mileage or other expense from personal vehicle usage and personal device usage (data, text or
22 phone); (5) all claims for the failure to provide meal breaks or rest breaks or premium pay in lieu
23 thereof; (6) all claims for the failure to keep accurate records, including records pertaining to hours
24 worked and start and stop time of meal breaks, due to time "edits" or any other reason; (7) all claims that
25 Defendant owed and failed to timely pay all wages due and owing during employment, or within the
26 required time at Class Members' termination, resignation or discharge; (8) all future claims for *Labor*
27 *Code* 203 penalties to the extent premised on a wage claim pled in the First Amended Complaint in this
28 case, with the alleged violation supposedly occurring prior to July 21, 2022; (9) all claims for the failure

1 to issue properly itemized wage statements pursuant to California *Labor Code* Section 226; (10) all
2 interest and statutory penalties based thereon, including those recoverable under the PAGA; (11) all
3 claims for violations of *Labor Code* Sections 201, 201.3, 202, 203, 204, 204b, 204.1, 204.2, 205, 205.5,
4 210, 218.6, 221-223, 226, 226.3, 226.7, 256, 500-508, 510, 512, 515, 516, 558, 558.1, 1174, 1174.5,
5 1182.12, 1194, 1194.2, 1197, 1197.5, 1198, 2698, 2699, 2699.3, 2699.5, 2802, 2810.5; 2926 and 2927;
6 (12) all claims for violations of any Wage Order issued by the Industrial Welfare Commission related to
7 any of the claims set forth herein; and (13) all claims for unfair competition pursuant to California
8 *Business and Professions Code* Section 17200, *et seq.* related to any of the claims set forth herein at any
9 time from July 31, 2017 through July 21, 2022.

10 10. As of the date of this Judgment and the Effective Date as set forth in the Settlement
11 Agreement, Named Plaintiffs Brian Strawn, Esteban Estrada, Adrian Pulido, Dominador Dauz, Brandon
12 Nelson, and Matthew Farwell hereby release and waive any and all claims of any kind whatsoever,
13 known or unknown, against the Released Parties through the execution of the Settlement Agreement.
14 Plaintiffs release the Released Parties from all claims, demands, rights, liabilities and causes of action of
15 every nature and description whatsoever, known or unknown, asserted or that might have been asserted,
16 whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising out of,
17 relating to, or in connection with any act or omission by or on the part of any of the Released Parties
18 committed or omitted prior to the execution hereof with the sole exception of workers' compensation
19 claims and any claims which cannot be released as a matter of law. The General Release includes any
20 unknown claims Plaintiffs do not know or suspect to exist in their favor at the time of the General
21 Release, which, if known by them, might have affected their settlement with, and release of, the
22 Released Parties or might have affected their decision not to object to this Agreement or the General
23 Release. By operation of the Stipulation and this Judgment, the Court further finds that Named
24 Plaintiffs have expressly waived and relinquished the provisions, rights, and benefits of Section 1542 of
25 the California Civil Code.

26 11. All Settlement Class Members and Named Plaintiffs are hereby permanently enjoined
27 and forever barred from instituting or prosecuting any action against Defendant or any other Released
28 Party for the Released Claims. Named Plaintiffs may take steps in *Bridgestone Retail Operations Wage*

1 and Hour Cases, Judicial Council Coordination Proceeding, Case No. 5054 to seek and effectuate
2 dismissal of the lawsuit with prejudice.

3 12. Neither the Settlement Agreement nor the Settlement contained therein, nor any act
4 performed or document executed pursuant to or in furtherance of the Settlement Agreement or the
5 Settlement (i) is, or may be deemed to be, or may be used as an admission of, or evidence of, the validity
6 of any Released Claim, or of any wrongdoing or liability of Defendant or any Released Party; or (ii) is,
7 or may be deemed to be, or may be used as an admission of, or evidence of, any fault or omission of
8 Defendant or any Released Party in any civil, criminal, or administrative proceeding in any court,
9 administrative agency, or other tribunal. Defendant or any of the Released Parties may file the
10 Settlement Agreement and/or the Judgment from this Action in any other action that may be brought
11 against it or them in order to support a defense or counterclaim based on principles of *res judicata*,
12 collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim
13 preclusion or issue preclusion or similar defense or counterclaim.

14 13. The only Class Members entitled to payment pursuant to this Judgment are Settlement
15 Class Members. Neither the Settlement Agreement nor this Judgment will result in the creation of any
16 unpaid residue or residual. Any funds that would have been paid to Settlement Class Members had they
17 cashed the check containing their respective Claim Amount within the Check-Cashing Period will be
18 paid to the State Controller Unclaimed Property Fund in the name of the Settlement Class Member for
19 whom the funds are designated in accordance with the Settlement Agreement. Pursuant to section 1.20
20 of the Settlement Agreement, no part of the Maximum Settlement Amount shall revert to Defendant.

21 14. The Court has reviewed Defendant's Hand Tool Policy attached as Exhibit A to the
22 Declaration of Erika Avila submitted in support of Plaintiff's unopposed Motion for Preliminary
23 Approval of Class Action Settlement, as well as Labor Code § 2802 and the applicable Wage Order
24 requirements concerning the provision of hand tools and finds that Defendant's Hand Tool Policy
25 facially complies with the California Labor Code and applicable Wage Order Requirements since
26 Defendant does not require its employees to provide tools or spend money on tools in order to do their
27 job. The Court makes no finding as to the legality of any acts in the administration of Defendant's Hand
28 Tool Policy. The applicable Tool Policy is attached as Exhibit A to this [Proposed] Judgment.

1 15. Class Counsel sought an award of attorneys' fees of \$805,000.00, litigation expenses of
2 \$61,480.58, Class Representative Service Fees for the Named Plaintiffs in the amount of \$15,000 each,
3 and for Claims Administration Costs in the amount of \$25,000.00. Defendant does not oppose these
4 requests. The Notice sent to Class Members included information regarding these amounts and that they
5 would be requested in connection with final approval of the Settlement Agreement. Class Members
6 have been given the opportunity to object to these amounts and not objections have been submitted in
7 any respect whatsoever. The Court has reviewed the evidence submitted by Class Counsel regarding
8 their hourly rates and the amount of time expended in the Actions for the benefit of Class Members.
9 The Court finds that the rates requested and hours expended are reasonable. This finding is further
10 supported by the lack of objection by Class Members to these amounts. The Court finds that these
11 amounts as set forth in the Settlement Agreement are fair and reasonable, and shall be awarded
12 accordingly as set forth herein.

13 16. The following payments, as required by the Settlement Agreement, are approved:

- 14 A) Payments to the Settlement Class Members for the full value of their Claim
15 Amount from the Net Settlement Amount and/or PAGA Penalty Payment in
16 accordance with the Settlement Agreement and as calculated by the Claims
17 Administrator;
18 B) \$805,000.00 in attorneys' fees awarded to Class Counsel;
19 C) \$61,480.58 for attorney' costs/expenses to be paid to Class Counsel;
20 D) \$25,000.00 to the Settlement Administrator, ILYM Group, Inc.;
21 E) \$15,000.00 each to Named Plaintiffs; and
22 F) \$37,500.00 to the Labor and Workforce Development Agency for PAGA
23 penalties.

24 17. Within one (1) business day after the Effective Date of this settlement (as that term is
25 defined in the Settlement Agreement), the Claims Administrator shall provide the Defendant with wire
26 and account information, and direct Defendant to deposit the amount of money necessary to fund the
27 Maximum Settlement Amount as set forth in the Settlement Agreement. Within nine (9) business days
28 of receiving the post-Effective Date notice from the Claims Administrator, Defendant shall wire the

1 funds requested by the Claims Administrator into a QSF. Within five (5) business days after receiving
2 the wire transfer from Defendant, the Claims Administrator shall prepare and wire the settlement funds
3 payable to Class Counsel for attorneys' fees and litigation costs awarded by the Court and the Named
4 Plaintiffs' Class Representative Service Fees. The Claims Administrator will calculate, withhold, and
5 remit all applicable taxes from the Maximum Settlement Fund, as well as comply with state, federal,
6 local or other tax reporting and tax return filing requirements, pursuant to the Settlement Agreement.
7 The Claims Administrator shall also distribute the funds to the Labor Workforce Development Agency,
8 Class Members, PAGA Members or State Unclaimed Property Fund, in accordance with the Settlement
9 Agreement.

10 18. This document shall constitute a Judgment for purposes of California Rule of
11 Court 3.769(h). Without affecting the finality of this Judgment in any way, the Court reserves exclusive
12 and continuing jurisdiction over the Action, the Named Plaintiffs, the Class Members, and Defendant for
13 the purposes of supervising the implementation, enforcement, construction, administration, and
14 interpretation of the Settlement Agreement and this Judgment.

15 IT IS SO ORDERED.

16 Dated: _____

11/17/22



17 Hon. Jill H. Talley
18 Judge of the Superior Court
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EXHIBIT A

Bridgestone Retail Operations (BSRO)

Tool Use Policy – California Store Teammates



BSRO Tool Use Policy – CA Store Teammates

This policy applies to all Bridgestone Retail Operations, LLC (BSRO) full time and part time employees who are subject to the laws of the State of California.

Introduction

BSRO does not require its employees to provide tools or equipment necessary to perform their job duties. No manager or other BSRO personnel may require an employee to provide tools or other equipment as a condition of employment at BSRO. BSRO will provide and maintain the tools or equipment necessary to perform each employee's job. Where necessary to perform assigned duties, BSRO will also provide at no cost to employees: (1) expendable supplies, such as toolbits, sandpaper, or lubricants; (2) power tools; (3) electronic diagnostic equipment; and (4) required safety equipment or apparel, such as safety glasses and gloves; and (5) specialty tools through various tool loaner or rental programs.

BSRO has three hand tool programs to accommodate the specific needs of its employees. Each employee will make a voluntary election of one of the three programs after reviewing their options described in this policy. The employee's voluntary election is maintained on an acknowledgement form by BSRO. The employee may elect a different program at any time by contacting his or her manager.

Shop Toolbox

For employees in the Maintenance Technician, Technician and similar positions, BSRO will provide a shop toolbox with the necessary hand tools to do the work required to perform his or her job. The tools are provided and maintained by the Company and are under the custody of the Store Manager. All store employees may use the shop toolbox as needed.

Instead of using Company-provided hand tools from the shop toolbox, technicians may instead elect to be issued a BSRO-provided personal toolbox, subject to the requirements outlined below for that program.

BSRO-Provided Personal Tools

BSRO will provide any employee in a technician or vehicle service position, including hybrid positions, with a personal tool box including the hand tools necessary to perform duties in accordance with the employee's specific job specification. The inventory of the toolbox is determined by BSRO, consistent with duties assigned to an employee. The employee may contact their manager to request additional tools not included in the standard toolbox for their job specification. An evaluation will be conducted to determine if the requested tool is necessary to perform the assigned duties. BSRO-provided personal toolboxes and hand tools are property of the Company and must be returned in good condition upon an employee's separation from employment with BSRO.

Cash Bond Requirement

If an employee elects to receive a BSRO-provided personal toolbox, the employee will be required to provide a cash bond. The cash bond will be held in trust by BSRO in an interest-bearing bank savings account as security for return of the items issued to the employee, subject to the requirements of California Labor Code 400 et seq. The amount of the bond is based on the technician's classification and the cost to BSRO of providing the hand tools. Bond amounts will not exceed actual cost or value of tools, whichever is less. The bond must be provided by each



technician electing this option in cash, check, or money order at the time the BSRO tool kit is provided, as part of a written agreement consistent with this policy. The cash bond and accrued interest will be returned, less authorized deductions, if any, at the time the tools are returned to BSRO. The current amount of the required bond for each position level is indicated below:

- Lead and Master Technician (\$14,099)
- Senior Technician (\$8,272)
- Maintenance Technician and Technicians (\$4,583)

Technician-Provided Personal Tools

BSRO does not require its technicians or vehicle service employees to provide tools or equipment necessary to perform their job duties; however, the Company also recognizes that it is the custom and practice in the automotive repair industry for professional technicians to acquire and maintain their own hand tools and toolboxes. BSRO does not prohibit individual technicians from bringing their personally-owned hand tools and toolboxes to work and using them on the job as a matter of personal preference. This option is entirely voluntary on the part of the employee. If the employee elects this option, BSRO will accommodate the technician by allowing personal tools and toolboxes to be kept at the store location.



Preview Questionnaire

California Tool Policy Questionnaire

BSRO does not require its employees to provide tools or equipment necessary to perform their job duties. No manager or other BSRO personnel may require an employee to provide tools or other equipment as a condition of employment at BSRO. BSRO will provide and maintain the tools or equipment necessary to perform each employee's job. Where necessary to perform assigned duties. BSRO will also provide: (1) expendable supplies, such as tool bits, sandpaper, or lubricants; (2) power tools; (3) electronic diagnostic equipment; (4) required safety equipment or apparel such as safety glasses; and (5) specialty tools.

BSRO has three hand tool programs to accommodate the specific needs of its employees. Each affected employee will make a voluntary election of one of the three programs after reviewing their options described in this policy. The employee's voluntary election is maintained on an acknowledgment form by BSRO. The employee may elect a different program at any time by contacting his or her manager.

To view the full policy, click here: [Tool Use Policy – California Teammates](#)

Please select your response. (Required)

- ☐ I already have my own personal tools and prefer to continue to use them. I choose not to receive a BSRO provided toolbox.
- ☐ Please provide me a BSRO provided personal toolbox. I understand the amount of the cash bond that I will need to deposit, will sign a written agreement consistent with the Tool Use Policy – California Teammates and bond requirements, and will provide BSRO the required cash bond.
- ☐ I choose to use the shop toolbox and/or BSRO's various tool loaner and rental programs, at no cost to me, instead of the BSRO provided personal toolbox, which would require me to post a cash bond.

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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.
18
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Case No. 34-2021-00300650

CLASS ACTION

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

Date: February 24, 2023

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 Final Approval of Class Action and PAGA Settlement (“Motion”). A true and correct copy
6 of the Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement”) in
7 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

remedies through the Labor and Workforce Development Agency (“LWDA”) prior to amending the Complaint to add a PAGA claim. Plaintiff filed a notice with the LWDA on April 28, 2021 setting forth the facts and theories of liability. A true and correct copy of the notice filed with the LWDA is being filed with this Motion as Exhibit C. A copy of the notice was also sent to Defendant via certified mail and the \$75.00 filing fee was remitted to the LWDA at that time. There was no response by the LWDA regarding its intent to investigate the claims alleged in Plaintiff’s notice for more than 65 days. As such, Plaintiff became authorized to commence a civil action under the PAGA and filed a First Amended Complaint on August 31, 2021. A true and correct copy of Plaintiff’s operative Complaint is filed with this Motion as Exhibit B. A copy of the Complaint was uploaded to the LWDA on October 1, 2021, after we received an endorsed copy back from Court.

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

5. Defendant is represented in this matter by Seyfarth Shaw LLP. From the beginning, Defendant has contested the merits of this case, the suitability of the case for class action or representative treatment, the manageability of the case at trial, and Plaintiff’s ability to prove a violation in each pay period for each employee among other defenses and contentions they made challenging the propriety of this action. For instance, Defendant contended that a majority of Class Members and Aggrieved Employees signed arbitration agreements that would preclude them from participating in the action, that Defendant is a small business with limited resources, that Defendant could demonstrate its good faith efforts to comply with California laws, and that Defendant is a family-owned and operated business that has employed many family members and friends, which could make the case more difficult to litigate. Defendant further contended, even assuming there was a finding supporting the imposition of PAGA penalties, that the Court would likely exercise its discretion to substantially reduce any such penalties owed based on evidence of good faith attempts to comply with California Labor Code obligations by Defendant. Notwithstanding its agreement to settle this matter, Defendant believes the practices Plaintiff is contending are unlawful either do not exist or, to the extent they do exist, fully comply with all state and federal employment laws with respect to Plaintiff and Class Members. Also, Defendant has contended that this matter is not appropriate for class certification outside of this 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. In analyzing the sample data and relevant policies and comparing them against
15 Plaintiff's allegations and theories of liability, the following represents the maximum recovery for each
16 asserted claim and the risks associated with the claims:

- 17 • Overtime Wages: This claim is based on allegations that bonuses and commissions paid
18 to Class Members were non-discretionary and should have been included in Class
19 Members' regular rates of pay for the purpose of calculating overtime wages. At the
20 time of mediation, the maximum possible damages for this claim based on Defendant's
21 time and payroll records was \$104,837.77, which is based on a violation rate of 26%.
22 This amount does not take into account any potential risks with respect to Plaintiff
23 proving the merits or damages. Defendant contended that rather than being a non-
24 discretionary payment, bonuses were paid to offset costs (such as health insurance) or
25 reward hard work as a sort of profit-sharing incentive. If the bonuses were
26 discretionary, there would be no requirement to include their value in Class Members'
27 regular rates of pay. Defendant also contended that to the extent there was any failure to
28 correctly calculate Class Members' rates of pay, it changed its pay practices, and no

overtime wages would have been owed after April 2021. Finally, Defendant contended that a majority of Class Members and Aggrieved Employees signed arbitration agreements that would preclude them from participating in this class action. Taking these factors into account, a more realistic range of recovery for this claim is \$0 to \$84,918.59.

- Meal Period: This claim is based on allegations that Class Members did not receive all meal periods they were entitled to. At the time of mediation, the maximum possible damages for this claim based on Defendant's time and payroll records was \$462,223.92. This amount does not take into account any potential risks with respect to Plaintiff proving the merits or damages. Defendant produced written meal period policies that were legally compliant regarding first meal periods. It is disputed whether Defendant's policy was legally compliant with respect to second meal periods prior to March 2021. In addition, Defendant contended that a majority of Class Members and Aggrieved Employees signed arbitration agreements that would preclude them from participating in this class action. Taking these risks into account, a more realistic range of recovery for this claim is \$0 to \$57,705.86.
- Rest Period: This claim is based on allegations that Class Members did not receive all rest periods they were entitled to. While it is possible that Defendant could make meal periods available, but not rest periods, or vice versa, it is reasonable to infer, especially where the reasoning for missed meal and rest periods is the same, that there would be a similar violation rate for both types of breaks. At the time of mediation, the maximum possible damages for this claim based on Defendant's time and payroll records was \$462,223.92, which is based on the same violation rates and shift experiences that Plaintiff contends applied to the meal period claims. Defendant produced written rest period policies that were legally compliant regarding first and second rest periods. It is disputed whether Defendant's policy was legally compliant with respect to third rest periods prior to March 2021. In addition, Defendant contended that a majority of Class Members and Aggrieved Employees signed arbitration agreements that would preclude

1 them from participating in this class action. Taking these risks into account, a more
2 realistic range of recovery for this claim is \$0 to \$57,705.86.

- 3 • Wage Statement: This claim is wholly derivative of the above claims and is based on
4 allegations that Defendant's wage statements did not contain accurate information as a
5 result of its failure to pay all overtime wages and paid sick time and its failure to provide
6 all meal and rest periods. At the time of mediation, the maximum possible damages for
7 this claim based on Defendant's time and payroll records was \$37,622. This amount
8 does not take into account any potential risks with respect to Plaintiff proving the merits
9 or damages. This was calculated using a \$50 penalty for each pay period during the 1-
10 year statute of limitations. This damages amount is likely an overestimation because it
11 assumes that Plaintiff would succeed in proving that alleged wage statement
12 inaccuracies were the result of knowing and intentional conduct by Defendant that
13 caused Class Members to suffer harm. If Plaintiff could not prove Class Members
14 suffered harm and that Defendant's conduct was knowing and intentional, recovery for
15 this claim could be eliminated entirely. Finally, Defendant contended that a majority of
16 Class Members and Aggrieved Employees signed arbitration agreements that would
17 preclude them from participating in this class action. Because there is potential variance
18 with the ability to prove each of the violations the wage statement claim is based on, it is
19 hard to exactly quantify the more realistic range of damages. However, it would be less
20 than \$37,622.
- 21 • Waiting Time: Similar to Plaintiff's wage statement claim, this claim is derivative of the
22 above claims. It is based on allegations that Class Members had wages due and owing
23 to them that remained unpaid after the end of their employment. Because this claim is
24 derivative, it carries the same risks identified for Plaintiff's overtime, sick time, and
25 meal and rest period claims. At the time of mediation, the maximum possible damages
26 for this claim based on Defendant's time and payroll records was \$510,911.52. This
27 amount does not take into account any potential risks with respect to Plaintiff proving
28 the merits or damages. This amount was calculated based on an assumption that all

1 former employees within the 3-year statute of limitations ended their employment with
2 wages owing to them. Plaintiff's failure to prevail on any of the above claims would
3 likely reduce the number of former employees with unpaid wages who would be eligible
4 to recover waiting time penalties. Moreover, there is substantial risk that Defendant's
5 policies and records would provide it with a good faith dispute affirmative defense,
6 which would eliminate the value of this claim entirely. *See Diaz v. Grill Concepts*
7 *Servs., Inc.*, 23 Cal.App.5th 859, 868 (2018). Plaintiff's best argument for unpaid wages
8 that might be deemed to avoid a good faith defense was the regular rate of pay overtime
9 claim. However, as noted above this was not without risk and not all Class Members
10 were affected by the regular rate of pay claim. Finally, Defendant contended that a
11 majority of Class Members and Aggrieved Employees signed arbitration agreements that
12 would preclude them from participating in this class action. As a result, a more realistic
13 range of recovery for this claim is \$0 to \$67,478.88.

- 14 • Reimbursement: This claim is based on allegations that Defendant failed to reimburse
15 Class Members for necessary expenses incurred from personal cellphone use, purchasing
16 car washes for Defendant's vehicles, and laundering uniforms. At the time of mediation,
17 the maximum possible damages for this claim based on Defendant's payroll records was
18 \$136,485. This calculation is based on \$10.00 owed per week for cellphone use and
19 \$5.00 owed per week for car washes. No amount was calculated for laundering uniforms
20 as it was determined that they only required normal laundering. Defendant contended
21 that Class Members were provided with tablets or phones as well as credit cards to
22 purchase car washes. Defendant also produced records of car washes Class Members
23 paid for using Defendant's credit card. Finally, Defendant contended that a majority of
24 Class Members and Aggrieved Employees signed arbitration agreements that would
25 preclude them from participating in this class action. As a result, a more realistic range
26 of recovery for this claim is \$22,747.50 to 45,495.
- 27 • Paid Sick Time: This claim is based on allegations that bonuses and commissions paid to
28 Class Members were non-discretionary and should have been included in Class

Members' regular rates of pay for purposes of calculating paid sick time. At the time of mediation, the maximum possible damages for this claim based on Defendant's time and payroll records was \$18,789.56. This amount does not take into account any potential risks with respect to Plaintiff proving the merits or damages. The risks identified above for Plaintiff's overtime claim also apply here.

- Violation of Right to Privacy: This claim is based on allegations that Defendant recorded Class Members' calls without their permission. Based on data provided for mediation the total exposure for this claim is \$490,000.00. Defendant produced documents evidencing Class Members received notifications that calls were recorded, including Defendant's Employee Handbook, a signed Consent to Call Monitoring and Recording, and e-mails from RingCentral (the app used to call customers). If Class Members were in fact notified, the value of this claim would be eliminated entirely.
- PAGA: This claim is derivative of the Labor Code violations identified above. Based on Class Members' payroll data, the total exposure for this claim is \$1,875,110.88. This amount does not take into account any of the potential risks associated with this claim. Because this claim is derivative it carries all the same risks identified in the claims above. For example, if Defendant were able to demonstrate that all bonus payments were discretionary, all claims that depending on the regular rate of pay theory of liability would have been eliminated, including the derivative PAGA claims based thereon. Additionally, the correct valuation of civil penalties under the PAGA was disputed. For example, Plaintiff valued civil penalty claims for failure to pay final wages under Labor Code section 226.3 for a total of \$723,500 instead of the \$100 per violation default penalty, which would have resulted in a total of \$289,400. Further, I believe the PAGA penalties in this case may be reduced due to the fact that the penalties would be in addition to amounts owed for substantive violations and much of the penalties are based on violations due to technical non-compliance with the Labor Code. Furthermore, Defendant produced a substantial number of documents and written policies that a Court may find demonstrates a good faith attempt at compliance that merits the reduction of

1 civil penalties. Courts regularly cut civil penalties on PAGA claims where statutory
2 penalties for the same violations are assessed as well. Courts are statutorily authorized
3 to use discretion to reduce penalties and the range of discretion used varies substantially.
4 *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30%
5 reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal.
6 2011) (82% reduction). Thus, civil penalties may be cut to approximately
7 \$1,312,577.62 (30%) to \$337,519.96 (82% reduction) or lower given the derivative
8 recovery. It is important to note that this discretionary reduction is completely separate
9 and in addition to any risks on the merits. Given the facts and highly disputed nature of
10 the claims, we felt the amount that might ultimately be awarded under this claim would
11 be low, especially in light of amounts that Courts have approved as reasonable
12 valuations in similar cases. *See Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589
13 (2010) (approving \$0 allocation to the resolution of PAGA claims based on their being
14 disputed and being part of a class settlement which was evaluated based on the terms of
15 the agreement overall); *Davis v. Cox Commc'ns California, LLC*, 2017 U.S. Dist.
16 LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in
17 \$275,000 settlement); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6
18 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer*
19 *v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010)
20 (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands*
21 *Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA
22 allocation in \$1,026,000 settlement); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist.
23 LEXIS 160052, at *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a
24 \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, at *14
25 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement fund); *Chu v.*
26 *Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011) (approving
27 PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund
28 settlement).

1 10. Based on our analysis and review of all relevant documents and Class Member
2 information, I have determined that the maximum damages for the asserted class claims is
3 approximately \$2,879,674.05, which includes civil penalties under the PAGA. The likely exposure for
4 PAGA penalties is approximately \$1,875,110.88 based on the counts alleged to the LWDA and the
5 class data. Based on our research, we did not find any prior Labor Commissioner or court decisions
6 that stated Defendant's practices and/or policies were improper. As such, a "subsequent violation" may
7 not be found for penalty calculation purposes and the exposure analysis here is based on an "initial
8 violation" valuation being adopted by any fact finder if this matter went to trial. The likely recovery if
9 Plaintiff was successful at trial on proving all the substantive class damages plus civil penalties after a
10 reduction of the PAGA penalties would be approximately \$1,342,083.13. Taking this into account,
11 Plaintiff's \$310,000 gross recovery under the Agreement represents approximately 23.1% of the
12 maximum likely value in this matter. After deducting from the Gross Settlement Amount the proposed
13 allocations for attorneys' fees and costs, any Enhancement Payment to the Class Representative,
14 Claims Administrator Costs, and the PAGA Payment, the net recovery under the Agreement,
15 \$161,349.46 represents approximately 12% of the maximum likely value in this matter. Based on the
16 final numbers from the administrator, the average net recovery is approximately \$1,213.15 and the
17 highest net recovery is approximately \$4,326.62. I believe the Agreement represents a reasonable
18 compromise of claims based on the legal and factual disputes in this case, the risks discussed above,
19 and the additional value of non-monetary recovery to Class Members and Aggrieved Employees from
20 Defendant's agreement that any non-compete agreements it entered into with Class Members and
21 Aggrieved Employees are void and unenforceable. The ability to secure a guaranteed settlement now
22 and ensure Class Members receive some compensation, rather than proceed to further litigation and
23 potentially recover nothing, was a motivating factor in reaching this Agreement.

24 11. In agreeing to represent Plaintiff and take on the case for all Class Members and
25 Aggrieved Employees, our office agreed to take this case on a contingency basis, meaning that we
26 would take a percentage of any settlement or judgment should we recover a monetary amount. We
27 took a risk that we would not recover any money in this matter if we were unsuccessful at trial. We
28 also took on the risk that the case may be subject to an unfavorable summary judgment ruling.

1 However, we believe it is important to make sure employees are able to find affordable representation
2 in order to ensure that employers are complying with all their legal obligations towards employees and
3 paying employees all their hard-earned wages.

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

1 worked on a variety of individual, class action, and PAGA cases involving wage and hour claims, such
2 as failure to pay overtime, failure to pay minimum wages, failure to provide meal and rest periods,
3 failure to pay reimbursement expenses, unlawful deductions, failure to keep accurate time records,
4 failure to provide paid sick leave, failure to pay all wages upon separation, unfair competition, breach
5 of contract, independent contractor misclassification, and salaried misclassifications. Some of the class
6 action and/or PAGA cases I am litigating and/or have litigated as lead or co-counsel include the
7 following:

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

- *Hercules, et al. v. Maximus Services, LLC*, Case No. 34-2019-00268385 (Sac. Sup. Ct.);
- *Insixiengmay v. Hyatt Corporation*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal);
- *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.).

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

4 14. Justin P. Rodriguez, Esq., also worked with me on this matter and was critical in
5 assisting with all aspects of the litigation of this case. Mr. Rodriguez attended and graduated college
6 from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the Departmental Citation for
7 Academic Achievement in the Philosophy program. He was one of only two recipients of this award
8 out of the entire Philosophy Department. After U.C. Davis, Mr. Rodriguez attended the University of
9 the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris Doctorate. He
10 graduated in the top 20% of his class and was a member of the Traynor Honor Society at McGeorge.
11 Other academic achievements of his include receiving a Witkin Award (top grade) in his legal research
12 and writing course, a Witkin Award in complex civil litigation, being a member of the Dean's List from
13 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from 2009–2010, being
14 an Associate Comment Editor for the *Pacific McGeorge Global Business & Development Law Journal*
15 from 2010–2011, and being selected as a Sacramento County Bar Association Diversity Fellow in
16 2009. Mr. Rodriguez was also a member of the Employment and Labor Law Society and an officer for
17 the Latino Law Students Association from 2009 to 2010.

18 15. Mr. Rodriguez was an associate of the Shimoda Law Corp from 2011 to 2016 and
19 became a partner in 2017. Shimoda Law Corp. became Shimoda & Rodriguez Law, PC, in 2022.
20 Since 2017, he has received an AV Preeminent rating from Martindale-Hubbell for his legal ability and
21 ethical standards. From 2018 to present, he has been recognized as a Super Lawyer (Rising Star). Mr.
22 Rodriguez has been a panel speaker and presented a number of seminars covering issues wage and hour
23 litigation in general and complex class and PAGA litigation in particular. These engagements include
24 the following: (1) *Epic Systems*, PAGA, and the Future of Employment Arbitration in California
25 (Sacramento County Bar Assoc., Sept. 2018); (2) Class Actions and PAGA Claims (Assoc. of Defense
26 Counsel of Northern California & Nevada, Jul. 2020); (3) Mediation: The Experienced Trial Lawyers
27 Perspective (Sacramento County Bar Assoc., Sept. 2020); (4) How to Become a Pivotal Part of Any
28 Wage and Hour Practice Group (Sacramento County Bar Assoc., Mar. 2021); (5) Emerging Trends and

1 Issues Relating to Arbitration and PAGA Claims in a Post-*Viking River Cruises* World (Sacramento
2 County Bar Assoc., Nov. 2022). Mr. Rodriguez was elected to the Sacramento County Bar Association
3 Labor and Employment Law Section’s executive committee in 2019 and was the Chair of the executive
4 committee for 2022. Mr. Rodriguez has also been a member of the Presiding Judge Civil Law
5 Advisory Committee for Sacramento County Superior Court since August 2020. His practice focuses
6 on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair Labor
7 Standards Act (“FLSA”) claims. He is actively involved in most of the complex litigation handled by
8 our firm. Class and/or PAGA actions he has litigated or is currently litigating include, but is not limited
9 to, the following:

- 10 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 11 • *Adams-Anguy v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- 12 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 13 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 14 • *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080
15 (San Joaquin Sup. Ct.);
- 16 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 17 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 18 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
19 Sup. Ct.);
- 20 • *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup.
21 Ct.);
- 22 • *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- 23 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-
24 00271174 (Sac. Sup. Ct.);
- 25 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
26 Ct.);
- 27 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
28 Ct.);

- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
- *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-00222101 (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. Galen T. Shimoda, Esq., also worked with me on this matter. Mr. Shimoda graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the University of the Pacific,

McGeorge School of Law and received his J.D. degree in 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor Society. Since graduating from McGeorge, he has authored a number of employment law articles for journals and regularly publishes articles on our firm's website.

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

19. He has practiced law in California since being admitted to the State Bar in 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases. He

1 began practicing class action law on the defense side at the firm of Orrick, Herrington & Sutcliffe LLP.
2 He then switched to plaintiff class action work in 2005. His class action experience is in wage and hour
3 law. He has litigated several class action cases in California State and Federal Courts, including up to
4 certification, settlement, preliminary and final approval, and disbursement of monies, and has been
5 found to be satisfy the adequacy requirements for class counsel. Some of the class action and/or PAGA
6 cases he is litigating and/or has litigated as lead or co-counsel over the past nineteen (19) years include,
7 but are not limited to, the following:

- 8 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 9 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 10 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 11 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 12 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 13 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 14 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 15 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 16 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
17 Sup. Ct.);
- 18 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 19 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
20 Ct.);
- 21 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
22 Ct.);
- 23 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
24 Sup. Ct.);
- 25 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 26 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
27 Ct.);
- 28 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);

- 1 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
2 00209613 (Sac. Sup. Ct.);
- 3 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 4 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 5 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- 6 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242
7 (San Joaquin Sup. Ct.);
- 8 • *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- 9 • *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac.
10 Sup. Ct.);
- 11 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 12 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 13 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-300000003 (Sac.
14 Sup. Ct.);
- 15 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 16 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 17 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 18 • *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- 19 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- 20 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 21 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 22 • *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- 23 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 24 • *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- 25 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 26 • *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- 27 • *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac.
28 Sup. Ct.);

- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- *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.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

21. My office is requesting attorneys' fees pursuant to the common fund doctrine pursuant to *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980). Plaintiff and Plaintiff's Counsel 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. There was

substantial risk in agreeing to take this case on a contingency basis and as a class action with the possibility that Plaintiff's Counsel would not receive any compensation their time and efforts due to issues regarding the merits and/or certification and have carried that risk over the course of the case. In my experience, the attorney's fee request of thirty-five percent (35%) of the common fund is within ranges typically approved in wage and hour class action litigation. This includes awards in Sacramento County Superior Court. For example, On November 17, 2022, the Court awarded 35% of the \$2,300,000.00 common fund settlement for attorney's fees. A true and correct copy of the Court's November 17, 2022 order is filed with this Motion as Exhibit G.

22. I believe a lodestar cross check supports finding a 35% fee award is appropriate in this case. The total lodestar is approximately \$139,845.00 based on approximately 267.8 hours, which includes approximately 10 hours of time for myself preparing for and attending the final approval hearing, ensuring compliance and the disbursement of funds consistent with a final approval order. I have reviewed our firm's billing records with Mr. Shimoda and Mr. Rodriguez and have created a summary chart showing the task categories and hours worked by each billing attorney in each category. A true and correct copy of this summary chart is being filed with this Motion as Exhibit F. In reviewing the entries with Mr. Shimoda and Mr. Rodriguez, I believe the hours reported are accurate. To the extent we believe it appropriate to do so in any given assignment, we attempt to assign tasks to the billing attorney with the lower rate in order to reduce costs that otherwise might inhibit the likelihood a case will resolve. Our firm uses billing software, which tracks the entries by day and time. Our billing software also records time in 1/10 of an hour increments. Our billing software also enables the use of a start/stop timer that can be used to more accurately record how long a particular task takes. A summary of the entries in Exhibit F by timekeeper is as follows:

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
Galen T. Shimoda	23.5	\$725	\$17,037.50
Justin P. Rodriguez	94.9	\$625	\$59,312.50
Brittany V. Berzin	149.4	\$425	\$63,495.00
Total:	267.8		\$139,845.00

23. I believe the requested rates of \$425 per hour for myself, \$625 per hour for Mr. Rodriguez, and \$725 per hour for Mr. Shimoda are within the prevailing market rates for Sacramento County and elsewhere. In fact, this Court approved each of us at these billings rates on November 17, 2022, in connection with a motion for final approval of a wage and hour class action settlement in *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.). See Exhibit G. Awarding fees at the hourly rate in effect at the time of the fee request is an appropriate and judicially approved method. See *Missouri v. Jenkins by Agyei*, 491 U.S. 274, 283 (1989). For the foregoing reasons, I believe the request of \$108,500 (approximately 35%) for attorneys' fees is justified given the results obtained on behalf of the class.

24. Although the Agreement set out a maximum of \$7,500.00 for potential attorney's costs, the total costs incurred or that will be incurred through a compliance hearing by Class Counsel is \$7,150.54. A true and correct copy of my firm's itemized costs incurred prior to the filing of this Motion and the expected costs incurred through the final approval and compliance hearings is attached to this declaration as Exhibit D. The difference in the actual costs and the maximum amount allocated under the Agreement will be added to the Net Settlement Amount and disbursed to Class Members.

25. 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 E.

26. 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 1 day of February 2023 in Elk Grove, California.

Brittany Berzin
Brittany V. Berzin

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Justin P. Rodriguez (Cal. State Bar No. 278275)
Brittany V. Berzin (Cal. State Bar No. 325121)
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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

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

Date: February 24, 2023

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 Final 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 for the benefit of all Class
14 Members. Prior to obtaining an attorney, I performed several hours of research trying to find a quality
15 attorney to handle the claims. I also researched the potential claims for about three to four months, so I
16 could have an informed discussion with the attorneys about the claims and have a better idea of what to
17 expect in litigation and how to help the case proceed. After securing Shimoda & Rodriguez Law, PC, I
18 continued to be actively involved in the case to help ensure a positive outcome.

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

26 5. I have given a detailed account of all the facts related to my employment and the claims
27 asserted in the Complaint. I spent multiple hours searching for any documents in my possession
28 relevant to the case. I provided extensive documentation in support of the claims brought against

1 Defendant including paystubs and other records relating to my pay, my employment agreement,
2 documents related to services I provided while employed, documents related to my work schedule,
3 records of expenses I incurred while employed, Defendant's policies, e-mails between myself and
4 Defendant, my call logs, and other documents related to my work with Defendant and to the claims
5 brought in the class action. I spent multiple hours reviewing documents for this case and discussing
6 Defendant's policies and payroll practices as they applied to myself and other Class Members with my
7 attorneys, Galen T. Shimoda, Justin P. Rodriguez and Brittany V. Berzin. For example, I went over my
8 scheduling and call log documents in detail with my attorneys to help give context to my meal and rest
9 period claims and reimbursement claims. This was very important as it helped not only the meal, rest
10 and reimbursement claims, but also claims related to claims for penalties. The review became even
11 more detailed when my attorneys asked me questions about the payroll data sample that was produced
12 as part of informal discovery to engage in mediation. I also spent a substantial amount of time
13 identifying several potential witnesses who could speak to my attorneys to give their own insights and
14 provide declarations. Overall, I have spent an enormous amount of time assisting in the prosecution of
15 this case. I estimate that in total I spent approximately 100 hours.

16 6. I participated in the negotiations and settlement discussions in this case, including
17 participating in mediation by phone, speaking with my attorneys to answer questions, provide any
18 additional information needed to assist the negotiations, and discussing the potential terms of the
19 Agreement to evaluate its adequacy. Throughout the course of this litigation, I have asked questions
20 when I needed clarification about various aspects of this case to make sure there were continually steps
21 taken to advance the interests of Class Members.

22 7. Although I have already spent a substantial amount of time on this case and assisting my
23 attorneys, I expect the amount of time I spend on this case will increase if preliminary approval is
24 granted because Class Members will likely reach out to me about the Settlement and the process for
25 receiving payment.

26 8. I have not received any benefits as a result of filing this lawsuit. I have, however,
27 experienced substantial burdens as a result of filing the lawsuit that other Class Members were not
28 subject to. For example, in bringing the lawsuit, I assumed the risk of having to pay Defendant's costs

1 if the Court or jury rules against us on the claims. My understanding is that this is a substantial risk
2 because the costs associated with litigation, in general, are very high and this cost is multiplied many
3 times over in complex litigation like class actions. I have spent a substantial amount of time in this
4 case, securing a monetary benefit for many individuals who have not had to do anything whatsoever to
5 have the opportunity to receive it. I have been employed full-time during the majority of the time this
6 case has been pending. As a result, the time I have spent on this case has to occur during my lunch
7 and/or breaks times, after hours, and on my days off. Rather than spend this time with friends and
8 family, I have spent this time for the benefit of Class Members. Finally, as part of the Settlement, I am
9 the only individual providing a general release of all my individual claims and waiving the protections
10 of California Civil Code section 1542 for unknown claims. No other Class Member is subject to such a
11 broad release.

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

15 10. I understand that any Class Representative Enhancement Payment I may receive is for
16 my participation as a Class Representative and it is not contingent on my support or approval of the
17 Agreement.

18 I declare under penalty of perjury under the laws of the State of California that the foregoing is
19 true and correct. Executed this 31 of January 2023 in Newport Beach,
20 California.

21
22
23 DocuSigned by:
24 *Michael Uribe*
25 M...F208E3383B924BC...

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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7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff MICHAEL URIBE

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

12 MICHAEL URIBE, individually and on behalf
13 of all other similarly situated employees,
14 Plaintiff,

15 vs.

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

Case No.: 34-2021-00300650

CLASS ACTION

DECLARATION OF CASSANDRA
POLITES OF ILYM GROUP, INC., IN
SUPPORT OF PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT

Date: February 24, 2023

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

20 I, Cassandra Polites declare as follows:

21 1. I am a resident of the United States of America and am over the age of 18. I am a
22 Case Manager for ILYM Group, Inc., (herein after referred to as "ILYM Group"), the professional
23 settlement services provider who has been retained by the Parties' Counsel and subsequently
24 appointed by the Court to serve as the Settlement Administrator for the above captioned matter. I
25 am authorized to make this declaration on behalf of ILYM Group and myself. I have personal
26 knowledge of the facts herein, and, if called upon to testify, I could and would testify competently
27 to such facts.
28

1 2. ILYM Group has extensive experience in administering Class Action Settlements,
2 including direct mail services, database management, claims processing and settlement fund
3 distribution services for Class Actions ranging in size from 26 to 4.5 million Settlement Class
4 Members.

5 3. ILYM Group was engaged by the Parties' Counsel and subsequently approved and
6 appointed by the Court to provide notification services and settlement administration, pursuant to
7 the terms of the Settlement, in the above referenced Action. Duties performed to-date and to be
8 performed after Final Approval of the Settlement is granted, include: (a) printing and mailing the
9 *Notice of Class Action Settlement* (referred to as "Notice Packet"); (b) receiving and processing
10 requests for exclusion; (c) resolving Settlement Class Members' disputes over the number of
11 workweeks Defendant has record of them working during the Class Period, which was pre-printed
12 on their individualized Class Notice; (d) calculating individual settlement award amounts; (e)
13 processing and mailing settlement award checks; (f) handling tax withholdings as required by the
14 Settlement and the law; (g) preparing, issuing and filing tax returns and other applicable tax forms;
15 (h) handling the distribution of any unclaimed funds pursuant to the terms of the Settlement; (i)
16 maintaining a website with a copy of this Notice Packet, the settlement agreement, and motion
17 papers; and (j) performing other tasks as the Parties mutually agree to and/or the Court orders
18 ILYM Group to perform.

19 4. On November 14, 2022, ILYM Group received the class data file from Counsel for
20 Defendant, which contained the name, social security number, last known mailing address, and the
21 dates of employment for each Class Member. The data file was uploaded to our database and
22 checked for duplicates and other possible discrepancies. The Class List contained 133 individuals
23 who worked 9,696 work weeks.

24 5. As part of the preparation for mailing, all 133 names and addresses contained in the
25 Class List were processed against the National Change of Address ("NCOA") database,
26 maintained by the United States Postal Service ("USPS"), for purposes of updating and confirming
27 the mailing addresses of the Class Members before mailing of the Notice Packet. The NCOA
28 contains requested change of addresses filed with the USPS. To the extent that an updated address

1 was found in the NCOA database, the updated address was used for the mailing of the Notice
2 Packet. To the extent that no updated address was found in the NCOA database, the original
3 address provided by Counsel for Defendant was used for the mailing of the Notice Packet.

4 6. On November 28, 2022, the Notice Packet was mailed, via U.S First Class Mail, to
5 all 133 individuals contained in the Class List. Attached hereto, as **Exhibit A**, is a true and correct
6 copy of the mailed Notice Packet.

7 8. As of the date of this declaration, 8 Notice Packets have been returned to our office.
8 Of the 8 returned Notice Packets, none returned with a forwarding address. ILYM Group
9 performed a computerized skip trace on the 8 returned Notice Packets that did not have a forwarding
10 address, in an effort to obtain an updated address for purpose of re-mailing the Notice Packet. As
11 a result of ILYM Group's skip tracing efforts, 6 updated addresses were obtained and the Notice
12 Packet was promptly re-mailed to those Settlement Class Members, via U.S First Class Mail.

13 9. As of the date of this declaration, a total of 2 Notice Packets have been deemed
14 undeliverable. Specifically, 2 have been deemed undeliverable as no updated address was found
15 notwithstanding the skip tracing.

16 10. As of the date of this declaration, ILYM Group has not received any request for
17 exclusion from the Settlement. The deadline to request exclusion from the Settlement was January
18 27, 2023.

19 11. As of the date of this declaration, ILYM Group has not received any objections to
20 the Settlement. The deadline to file an objection to the Settlement was January 27, 2023.

21 13. The Net Settlement Fund available to Settlement Class Members is \$161,349.46
22 and was calculated by subtracting the requested attorneys' fees (\$108,500.00), the amount
23 allocated for litigation costs and expenses (\$7,150.54), the requested Enhancement Payment
24 (\$15,000.00), the requested Settlement Administration Costs (\$8,000.00), the LWDA Payment
25 (\$7,500.00) and the PAGA Payment (\$2,500.00) from the Gross Settlement Amount
26 (\$310,000.00).

27 14. As of this date, there are 133 Qualified Claimants, *i.e.*, Class Members who did not
28 submit requests for exclusion. Each Qualified Claimant's share of the settlement was determined

1 by dividing their total Qualifying Workweeks within the Class Period by the total Qualifying
2 Workweeks worked by all Class Members within the Class Period. That fraction was then
3 multiplied by the Net Settlement Amount to arrive at the Class Members' individual share of the
4 Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA
5 Payment was determined by dividing their total Qualifying Workweeks within the PAGA Claim
6 Period by the total Qualifying Workweeks worked by all Aggrieved Employees within the PAGA
7 Claim Period. That fraction was then multiplied by the 25% portion of the PAGA Payment to
8 arrive at Aggrieved Employees' individual share.

9 15. The *highest* individual settlement share to a Qualified Claimant is approximately
10 \$4,326.62, the *average* individual settlement share to a Qualified Claimant is approximately
11 \$1,213.15.

12 16. Pursuant to the Agreement, 25% of the PAGA Payment (\$2,500.00) will be
13 allocated to Aggrieved Employees regardless of whether they opt out of the class settlement.
14 Aggrieved Employees cannot opt out of the PAGA settlement.

15 17. The *highest* individual PAGA share to an Aggrieved Employee is approximately
16 \$42.26, the *average* individual PAGA share is approximately \$18.80.

17 17. ILYM Group's total fees and costs for services in connection with the administration
18 of this Settlement, which includes fees and costs incurred to-date, as well as anticipated fees and
19 costs for completion of the settlement administration, are \$8,000.00. ILYM Group's work in
20 connection with this matter will continue with the calculation of the settlement award payments,
21 issuance and mailing of the settlement award checks, the necessary tax filing and reporting on such
22 payments, and any other tasks that the Parties mutually agree to and/or the Court orders ILYM
23 Group to perform.

24 \\\

25 \\\

26 \\\

27 \\\

28 \\\

1 I declare under penalty of perjury under the laws of the State of California and the United
2 States that the foregoing is true and correct to the best of my knowledge and that this Declaration
3 was executed this 31st day of January 2023, at Tustin, California.

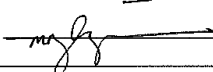
4
5
6 
7 CASSANDRA POLITES

EXHIBIT “A”

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 May 2, 2022 (the “Class Members”), and/or from April 28, 2020, to May 2, 2022 (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 October 31, 2022, 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 «Class_Work_Weeks» weeks during the applicable Class Period (as defined below), which means your share of the settlement proceeds is estimated to be \$«Estimated_Individual_Class_Amount» and your share of the PAGA payment is estimated to be \$«Estimated_Individual_PAGA_Amount». 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 May 2, 2022 (the “Class Period”), and the PAGA Period is April 28, 2020, to May 2, 2022 (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 January 27, 2023. 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 JANUARY 27, 2023. THE REQUEST TO OPT OUT MUST BE SIGNED, DATED AND MAILED BY FIRST CLASS U.S. MAIL OR THE EQUIVALENT, TO:

ILYM Group, Inc.
P.O. Box 2031
Tustin, CA 92781
Telephone: (888) 250-6810
Fax: (888) 845-6185

The request to opt out must be postmarked no later than January 27, 2023. If you submit a request to opt out which is not postmarked by January 27, 2023, 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 January 27, 2023. 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 Department 25, 720 9th Street, Sacramento, CA 95814 on February 24, 2023 at 9:00 a.m. 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

A copy of this notice and motions for approval of the settlement may be accessed online at www.ilymgroup.com/EcoGuard

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 (888) 250-6810

BY ORDER OF THE COURT

Uribe v. EcoGuard Pest Management, Inc.

c/o ILYM Group, Inc.

P.O. Box 2031

Tustin, CA 92781

«ILYMID
QR
Code»

ILYM ID: «ILYMID»

«First_Name» «Last_Name»

«Address_1»

«City», «State» «Zip»

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 & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
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 FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: February 24, 2023

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 Final Approval of Class Action and PAGA Settlement (“Motion”) in the above
3 referenced case came before this Court, on February 24, 2023 at 9:00 a.m., in Department 25 before
4 the Honorable Jill H. Talley, presiding. Named Plaintiff Michael Uribe (“Plaintiff”) filed this putative
5 class action on May 12, 2021. The operative Complaint alleges that Defendant EcoGuard Pest
6 Management, Inc. (“Defendant”) failed to pay overtime, failed to provide accurate wage statements,
7 failed to timely pay final wages, failed to provide meal and rest periods or pay premiums in lieu
8 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. The
14 class action settlement was preliminarily approved by this court on October 31, 2022.

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

22 **I. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**
23 **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 certifying the settlement class is required to avoid each Class Member
23 from litigating similar claims individually. This settlement will achieve economies of scale for Class
24 Members with relatively small individual claims and conserve the resources of the judicial system.

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

28 //

II. 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 that the Agreement, which includes a total maximum gross payment of \$310,000.00, falls within the range of reasonableness and is fair, reasonable, and adequate for the class. The Court also acknowledges that Class Members were able to object to the settlement through the administration process and at a fairness hearing. No such objections were made by the class members and zero class members opted out of the settlement

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 gives final approval to the Agreement and all terms therein as if stated here in full, including the \$310,000 Gross Settlement Amount.

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

Class Counsel sought an award of attorneys' fees of \$108,500.00, attorney's costs of \$7,150.54, an Enhancement Payment to the Class Representative in the amount of \$15,000, and for Claims Administrator Costs in the amount of \$8,000.00. Defendant does not oppose these requests. The Notice of Settlement sent to Class Members included information regarding these amounts and that they would be requested in connection with final approval of the Agreement. Class Members have been given the opportunity to object to these amounts and no objections have been submitted in any respect whatsoever. The Court has reviewed the evidence submitted by Class Counsel regarding their hourly rates, including prior fee awards in Sacramento County Superior Court at the requested rates, and the amount of time expended in the litigation for the benefit of Class Members. The Court finds that the rates requested and hours expended are reasonable. The Court has also reviewed the updated itemized costs submitted by

1 Class Counsel, the information provided by the Class Representative regarding the efforts and burdens
2 undertaken for the benefit of the class, and the cost information provided by the Claims Administrator in
3 its declaration. The Court finds that these amounts requested for attorneys' fees and costs, the
4 Enhancement Payment, and the Claims Administrator Costs are fair and reasonable, and awarded as
5 requested and deducted from the gross settlement amount. This finding is further supported by the lack
6 of objection by Class Members to these amounts. The difference between the actual attorneys costs and
7 Claims Administrator Costs awarded and the originally allocated amounts for each payment will be
8 added to the Net Settlement Amount pursuant to the terms of the Agreement.

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

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

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

18 The Court finds that the Notice of Settlement, which was submitted with Plaintiff's Motion as
19 Exhibit A to the Declaration of Cassandra Polites, fairly and adequately advises Class Members and
20 Aggrieved Employees of the terms of the Agreement, the rights being waived, their right to opt out, the
21 ability to dispute the number of workweeks worked during the Class Period, their estimated pro rata
22 share of the Net Settlement Amount, how to participate in the settlement, how to file documentation in
23 opposition to the proposed settlement, and when to appear at the fairness hearing. The Court further
24 finds that the Notice of Settlement and distribution of such notice by first class mail to each identified
25 Class Member and Aggrieved Employee at their most recent address based on a National Change of
26 Address database search from the Class Members' last known address and a skip trace on any Class
27 Members who have the Notice of Settlement returned as "undeliverable" or "not at this address"
28 comported with all constitutional requirements, including those of due process.

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 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	180 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

IT IS FURTHER ORDERED that this final approval order is effective as a judgement with each party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to the

1 Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved
2 Agreement.

3 **IT IS SO ORDERED.**

4
5 Date: _____

By: _____
Judge of the Superior Court