

JAMES HAWKINS APLC
JAMES R. HAWKINS SBN 192925
GREGORY MAURO, SBN 222239
MICHAEL CALVO, SBN 314986
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676
James@jameshawkiNSFplc.com
Greg@jameshawkiNSFplc.com
Michael@jameshawkiNSFplc.com

Attorneys for Plaintiff, DAVID G. GAGNIER
On behalf of himself and all others similarly situated

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID D. GAGNIER, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

SITEONE LANDSCAPE SUPPLY,
LLC, a Delaware Limited Liability
Company; and DOES 1-10, inclusive,

Defendants.

Case No. 8:21-cv-01834 CJC (DFMx)
Hon. Cormac J. Carney

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
THE CLASS ACTION
SETTLEMENT AGREEMENT.**

Date: June 26, 2023
Time: 01:30 p.m.

1 **[PROPOSED] ORDER**

2 Plaintiff David D. Gagnier (“Plaintiff”) filed a motion for Preliminary
3 Approval of the Stipulation and Agreement of Settlement (the “Settlement”) between
4 Plaintiff and Defendant SiteOne Landscape Supply LLC (“Defendant”) (Defendant
5 and Plaintiff are referred to as the “Parties”). Having considered the Parties’
6 Settlement, the Memorandum of Points and Authorities in Support of the Motion for
7 Preliminary Approval of Class Action Settlement, the documents submitted in support
8 of the motion, and all supporting legal authorities and documents,

9 IT IS HEREBY ORDERED:

10 1. The Court GRANTS preliminary approval of the Settlement based upon
11 the terms set forth in the Settlement, and uses the same defined terms as used in the
12 Settlement. The Settlement appears to be fair, adequate and reasonable to the Class.
13 Based on a review of the papers submitted by Plaintiff, the Court finds that the
14 Settlement is the result of arms-length negotiations conducted after Class Counsel had
15 adequately investigated the claims and become familiar with the strengths and
16 weaknesses of the claims. For purposes of this Order, the Court adopts and
17 incorporates all definitions set forth in the Settlement agreement. The assistance of an
18 experienced mediator in the settlement process supports the Court's conclusion that
19 the Settlement is non-collusive.

20 2. Solely for purpose of settlement in accordance with the Settlement and
21 Rule 23 of the Federal Rules of Civil Procedure and other laws and rules applicable to
22 preliminary settlement approval of class actions, the Court conditionally certifies the
23 following class (referred to as Settlement Class members): means all persons who
24 have been employed by Defendants as non-exempt employees or equivalent positions,
25 however titled, in the state of California during the Class Period (or if any such person
26 is incompetent, deceased, or unavailable due to military service, the person’s legal
27 representative or successor in interest evidenced by reasonable verification).
28 (Settlement I § 5). Class Period means the period from July 30, 2017 through August

1 15, 2022. (Settlement I § 6). Defendant represents there are approximately 1,150 Class
2 Members who worked approximately 94,281 workweeks.

3 3. The settlement of class-action related claims and settlement of claims
4 under the Private Attorney General Act (“PAGA”) set forth in the Settlement between
5 Plaintiff and Defendant is preliminarily approved as it appears to be proper, to fall
6 within the range of a fair, reasonable and adequate settlement, and to be presumptively
7 valid subject to final approval.

8 4. For settlement purposes only, the Court appoints Plaintiff Gagnier as
9 Class Representative and his counsel, James R. Hawkins and Gregory Mauro from
10 James Hawkins APLC as Class Counsel.

11 5. The Court approves ILYM Group, Inc. to act as the Settlement
12 Administrator. Pursuant to the terms of the Settlement the Settlement Administrator
13 will administer the applicable provisions of the Settlement agreement, including, but
14 not limited to, distributing the class notice, processing responses, making all payments
15 to any person or entity from the settlement amounts, for all required tax reporting and
16 withholding, and for communicating the information regarding status of the payments
17 to the Parties’ counsel.

18 6. The Court approves, as to form and content, the Notice of Proposed Class
19 Action Settlement (the “Class Notice”) attached as Exhibit “A”.

20 7. The Court approves the procedure for Settlement Class members to
21 participate in, request exclusion from or object to, and preserve appeal rights as set
22 forth in the Settlement and the Class Notice.

23 8. The Court finds that distribution of the Class Notice in the manner set
24 forth in this Order and the Settlement Agreement constitutes the best notice
25 practicable under the circumstances, and constitutes valid, due and sufficient notice to
26 all members of the Class, complying fully with the requirements of Rule 23 of the
27 Federal Rules of Civil Procedure, the Constitution of the United States, and any other
28 applicable laws. The Class Notice set forth herein and in the Settlement provides a

1 means of notice reasonably calculated to apprise the Settlement Class members of the
2 pendency of the action and the proposed settlement, and thereby meets the
3 requirements of Rule 23(c)(2) of the Federal Rules of Civil Procedure, as well as due
4 process under the United States Constitution and any other applicable law, and shall
5 constitute due and sufficient notice to all Settlement Class members entitled thereto.
6 Counsel for the Parties are authorized to correct any typographical errors in settlement
7 and make clarifications, to the extent the same are found or needed, so long as such
8 corrections do not materially alter the substance of the documents.

9 9. Defendant is directed to provide the Settlement Administrator class data
10 as set forth in the Settlement (consisting of the names, last-known addresses, Social
11 Security numbers, and number of workweeks determined by Defendant based on
12 readily available information as described in the Settlement Agreement).

13 10. The Court directs the Settlement Administrator to perform address
14 verification measures and mail the Class Notice by first class mail to the Settlement
15 Class members receiving the data and to otherwise carry out the Settlement according
16 to the terms of the Settlement Agreement and in conformity with this Order. The
17 Parties are also ordered to carry out the Settlement according to the terms of the
18 Settlement Agreement.

19 11. All Settlement Class members shall be deemed to participate in the
20 Settlement, although any Settlement Class members who wishes to comment on or
21 object to the Settlement or who elects not to participate in the Settlement has until
22 forty-five (45) days after the mailing of the Class Notice to submit his or her objection
23 or request to be excluded, pursuant to the procedures set forth in the Class Notice and
24 Settlement. The Settlement Administrator must send the objection to all counsel.
25 Class Counsel must file the objection with the Court. The Parties shall be permitted to
26 file responses to the objection in addition to any motion for final approval documents.
27 If a Settlement Class member submits both an objection and an opt out request, the
28 opt out request will be honored and the objection will be disregarded.

 12. Any Settlement Class member who has submitted such written objections

1 may, but is not required to, appear himself or herself, or through counsel, at the final
2 fairness and approval hearing and object to the approval of the Settlement. No
3 Settlement Class member, or any other person, shall be heard or entitled to contest the
4 approval of the proposed Settlement, the judgment to be entered approving the same,
5 unless that Settlement Class member has submitted written objections in the manner
6 set forth herein. Any Settlement Class member who does not make his or her
7 objection(s) in the manner so provided herein and in the Class Notice shall be deemed
8 to have waived such objection(s) and shall forever be foreclosed from making any
9 objection(s) to the fairness or adequacy of the proposed settlement as incorporated in
10 the Settlement agreement and the right to appeal any orders that are entered relating
11 thereto, unless otherwise ordered by the Court.

12 13. The Court preliminarily approves the handling of unclaimed funds set
13 forth in the Settlement as set forth in the Agreement.

14 14. Upon entry of final approval and judgment, in light of the binding nature
15 of a PAGA judgment or settlement on non-party employees pursuant to *Arias v.*
16 *Superior Ct. (Dairy)*, 46 Cal. 4th 969, 985-986 (2009), and *Cardenas v. McLane*
17 *Foodservice, Inc.*, 2011 WL 379413 at *3 (C.D. Cal. Jan. 31, 6 2011), PAGA
18 Releasors (whether or not they are Settlement Class members) shall receive their pro
19 rata portion of the 25% of the PAGA Amount and will have been deemed to have
20 fully released the Released PAGA Claims. Even if the PAGA Member opts out of the
21 Settlement, PAGA Releasors cannot opt out of receiving their pro rata portion of the
22 25% of the PAGA Amount. However, this provision does not apply if the Court does
23 not grant final approval of the settlement.

24 15. Neither this Order, the Settlement, nor any document referred to therein,
25 nor any action taken to carry out the settlement embodied in the Settlement, may be
26 construed as, or may be used as an admission by or against Defendant or any of the
27 other Released Parties (as that term is defined in the Settlement) of any fault,
28 wrongdoing or liability whatsoever. The entering into or carrying out of the
Settlement, and any negotiations or proceedings related thereto, shall not in any event

1 be construed as, or deemed to be evidence of, an admission or concession with regard
2 to the denials or defenses by Defendant or any of the other Released Parties and shall
3 not be offered in evidence in any action or proceeding against Defendant or any of the
4 Released Parties in any court, administrative agency or other tribunal for any purpose
5 whatsoever other than to enforce the provisions of this Order, the Settlement, or any
6 related agreement or release.

7 16. Class Counsel shall file a motion for final approval of settlement no later
8 than September 16, 2023. Any request by Class Counsel for an award of attorneys'
9 fees or reimbursement of expenses shall be filed concurrently, and that request shall
10 be accompanied by supporting evidence.

11 17. The Court reserves the right to adjourn the date of the final fairness and
12 approval hearing and any adjournment thereof without further notice to the members
13 of the Class, and retains jurisdiction to consider all further applications arising out of
14 or connected with the settlement. The Court may approve the settlement, with such
15 modifications as may be agreed upon by the Parties to the Settlement, if appropriate,
16 without further notice to the Class.

17 18. A hearing (the "Final Fairness and Approval Hearing") shall be held on
18 Monday October 16, 2023, at 1:30 p.m. before the Honorable Cormac J. Carney in
19 Courtroom 9B of the United States District Court for the Central District of
20 California, located at the Ronald Reagan Federal Building, United States Courthouse,
21 411 West Fourth Street, Santa Ana, CA, 92701-4516. At that time, the Court shall
22 determine: (a) whether the proposed settlement of the Action on the terms and
23 conditions provided for in the Settlement Agreement is fair, just, reasonable and
24 adequate, and should be finally approved; (b) whether judgment as provided in the
25 Settlement Agreement should be entered herein; and (c) whether to approve Class
26 Counsel's application for an award of attorneys' fees and costs, Plaintiff's application
27 for a Class Representative payment, Plaintiff's application for a California Labor &
28 Workforce Development Agency ("LWDA") payment, and Plaintiff's request for

1 payment of expenses to the Settlement Administrator. The Court may continue or
2 adjourn the final fairness and approval hearing without further notice to members of
3 the Settlement Class.

4 19. Pending further order of this Court, all proceedings in this matter except
5 those contemplated herein and in the Settlement Agreement are stayed and suspended
6 until further order of this Court.

7 20. The Court recognizes that certification under this Order is for settlement
8 purposes only, and shall not constitute or be construed as a finding by the Court, or an
9 admission on the part of Defendant or any of the Released Parties, of any fault or
10 commission with respect to any claim or that this action is appropriate for class
11 treatment for litigation purposes. Entry of this Order is without prejudice to the rights
12 of Defendant or any of the Released Parties to oppose class certification in this action,
13 should the proposed Settlement not be granted final approval.

14 21. If for any reason the Court does not execute and file an Order of Final
15 Approval, or if the effective date of the Settlement does not occur for any reason
16 whatsoever, the Settlement agreement and the proposed Settlement that is the subject
17 of this Order, and all evidence and proceedings had in connections therewith, shall be
18 without prejudice to the status quo ante rights of the Parties to the litigation, as more
19 specifically set forth in the Settlement agreement.

20 IT IS SO ORDERED.

21 Dated:

22 _____
23 The Honorable Cormac J. Carney
24 U.S. District Court Judge
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