COHELAN KHOURY & SINGER
Isam C. Khoury (SBN 58759)
ikhoury@ckslaw.com
Michael D. Singer (SBN 115301)
msinger@ckslaw.com
Jeff Geraci (SBN 151519)
jgeraci@ckslaw.com
Rosemary C. Khoury (SBN 331307)
rkhoury@ckslaw.com
605 C Street, Suite 200
San Diego, CA 92101
Telephone: (619) 595-3001/Facsimile: (619) 595-3000

LAW OFFICES OF SAHAG MAJARIAN II
Sahag Majarian (SBN 146621)
sahagii@aol.com
Garen Majarian (SBN 334104)
garen@majarianlawgroup.com
18250 Ventura Blvd.
Tarzana, CA 91356
Telephone: (818) 609-0807/Facsimile: (818) 609-0892

Attorneys for Plaintiff Gabriela Contreras, on behalf of herself
and all others similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF TULARE

GABRIELA CONTRERAS, on behalf of herself and all others similarly situated, Plaintiff, v. ACMPC CALIFORNIA 6, LLC dba TREESOURCE CITRUS NURSERY, a California Limited Liability Company; ACM HUMAN RESOURCES, LLC, an Oregon Limited Liability Company; and DOES 1 Through 10, inclusive, Defendants.	Case No. VCU290391 ASSIGNED FOR ALL PURPOSES TO: The Honorable David Mathias Department 1 **CLASS ACTION** **MEMORANDUM OF POINTS AND ATHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR ORDER GRANTING PRELIMINARY APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT** Date: April 16, 2026 Time: 8:30 a.m. Dept.: 1 Complaint filed: February 8, 2022 Trial date: Not set

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605 C Street, Suite 200
San Diego, CA 92101

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I. INTRODUCTION

Plaintiff Gabriela Contreras ("Plaintiff") seeks preliminary approval of a $386,000, pre-certification, non-reversionary proposed wage and hour class and Private Attorneys General Act ("PAGA") settlement. The proposed settlement covers an estimated 118 current and former nonexempt employees of Defendant ACM Human Resources, LLC who were assigned to work at Defendant ACMPC California 6, LLC (doing business as TreeSource Citrus Nursery) (ACM Human Resources, LLC and ACMPC California 6, LLC collectively "ACMPC" or "Defendants") in California during the Class Period from February 8, 2018 through November 15, 2025.

Plaintiff alleges, during the Class Period, ACMPC failed to: pay minimum, regular, and overtime wages, pay split shift premium wages, pay reporting time pay, provide meal periods, authorize and permit paid rest periods, provide accurate, itemized wage statements, and timely pay wages due at separation, resulting in a violation of the Unfair Competition Law ("UCL"). Plaintiff also alleges ACMPC, during the PAGA Period from August 12, 2021 through November 15, 2025, committed these same violations against, and failed to maintain a reasonably comfortable workplace temperature for, an estimated 87 non-exempt employees who worked for Defendant ACM Human Resources, LLC and were assigned to work at Defendant ACMPC California 6, LLC (doing business as TreeSource Citrus Nursery) ("Aggrieved Employees"). Declaration of Isam C. Khoury ("Khoury Decl."), ¶ 11; **Exhibit 1** thereto, Class Action and PAGA Settlement Agreement ("SA"), ¶¶ 1.4, 1.9, 1.12, 1.21, 4.1, Class Notice.

II. PARTIES, CLASS, AND AGGRIEVED EMPLOYEES

A. Defendants and Plaintiff

Defendant ACMPC California 6, LLC is a limited liability company in California doing business as Treesource Citrus Nursery that serves the California citrus industry and greenhouse growers around the world by producing and selling starter trees called "Citrus Liners." Khoury Decl., ¶ 12. Defendant ACM Human Resources, LLC is a limited liability company registered in Oregon, and is the company listed as the employer on Plaintiff's wage statements. Khoury Decl., ¶ 13. Plaintiff Gabriela Contreras worked for ACMPC at the Tree Source Citrus Nursery at 34816 Rd 192, Woodlake, California 93286, within Tulare County, California, as a non-exempt

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San Diego, CA 92101

employee on and off and seasonally for approximately 20 years, ending September 13, 2021. Khoury Decl., ¶ 14; **Exhibit 2** thereto, Second Amended Class and Representative Action Complaint ("Complaint")[1], ¶ 5; Declaration of Gabriela Contreras ("Contreras Decl."), ¶ 3. Plaintiff's job duties included pruning, packing, budding, sorting, and other nursery tasks. Contreras Decl., ¶ 3; Complaint, ¶ 5.

B. Proposed Class Members and Aggrieved Employees

Proposed Class Members are all current and former nonexempt employees of Defendant ACM Human Resources, LLC who were assigned to work at Defendant ACMPC California 6, LLC (doing business as TreeSource Citrus Nursery) in California during the Class Period who do not timely and properly opt out of the proposed settlement. SA, ¶¶ 1.5, 1.9, 1.28, 1.35. The Class Period is from February 8, 2018 through November 15, 2015. SA, ¶ 1.12. Aggrieved Employees are all current and former nonexempt employees of Defendant ACM Human Resources, LLC who were assigned to work at Defendant ACMPC California 6, LLC (doing business as TreeSource Citrus Nursery) in California during the PAGA Period. SA, ¶ 1.4. The PAGA Period is from August 12, 2021 through November 15, 2025. SA, ¶ 1.31. Defendants estimate that through September 25, 2025, there are 118 Class Members who worked a total of 22,777 workweeks during the Class Period, and 87 Aggrieved Employees who worked 11,955 workweeks during the PAGA Period. Khoury Decl., ¶ 15; SA, ¶ 4.1. Aggrieved Employees will not be able to opt out of the settlement, and release, of PAGA claims. SA, ¶ 5.3, Class Notice, ¶ 3.5.

III. PROCEDURAL HISTORY

On February 8, 2022, Plaintiff submitted a notice to ACMPC and the LWDA pursuant to PAGA alleging potential Labor Code violations under Labor Code sections 201-203, 226, 226.7, 510, 512, 860, 1174, 1194, and 1198. SA, ¶ 1.33. On December 23, 2025, Plaintiff submitted an amended notice to ACMPC and the LWDA pursuant to PAGA to clarify claims released in the settlement. *Id.*, ¶ 2.2; Khoury Decl., ¶ 16. As required, Plaintiff has waited sixty-five days before

[1] Plaintiff filed a stipulation and proposed order to allow the filing of the SAC, on March 20, 2026, in accordance with the Settlement Agreement. SA, ¶ 2.1.

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filing the operative second-amended complaint. Khoury Decl., ¶ 17.

On February 8, 2022, Plaintiff commenced a putative class action by filing a Complaint alleging causes of action against ACMPC for alleged (1) failure to pay minimum, regular, and overtime wages; (2) Failure to pay split shift premium wages; (3) Failure to pay reporting time pay; (4) Failure to provide meal periods; (5) Failure to provide rest periods; (6) Failure to provide accurate itemized wage statements; (7) Failure to timely pay wages due at separation; and (8) Violations of the unfair competition law. SA, ¶ 2.1. On August 12, 2022, Plaintiff filed a first amended complaint adding claims under PAGA. *Id.* On March 20, 2026, Plaintiff filed stipulation and proposed order to allow the filing of a second amended alleging all claims released by the settlement. Khoury Decl., ¶ 18.

Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written notice to ACMPC and the LWDA by sending the PAGA Notices. SA, ¶ 2.2. Khoury Decl., ¶ 19.

On December 23, 2022, the Court, following a stipulation by the Parties, ordered Plaintiff to attend binding individual arbitration and stayed further judicial proceedings pending the completion of arbitration. In March 2023, the Parties booked an arbitration hearing with Howard Broadman, Esq. with hearing dates scheduled for October 23-24, 2023. After propounding and answering arbitration discovery, the Parties, on September 14, 2023, agreed to postpone Plaintiff's individual arbitration hearing and to mediate the Action. SA, ¶ 2.3.

On June 6, 2024, the Parties participated in an all-day mediation presided over by Gig Kyriacou, which was initially unsuccessful, but led to the settlement of this action after extensive negotiations, and the acceptance of a mediator's proposal by Mr. Kyriacou in September 2025. Khoury Decl., ¶ 20; SA, ¶ 2.4.

The Court has not granted class certification, nor has Plaintiff requested certification. SA, ¶ 2.6. The Parties, Class Counsel and Defense Counsel are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement. *Id.*, ¶ 2.7.

IV. PRE-MEDIATION INVESTIGATION AND DISCOVERY

Prior to mediation and in negotiating the Settlement, Defendants produced Plaintiff's personnel file, pertinent policy documents applicable to the class, and timekeeping data

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(including clock-in and clock-out times, and times taken for meal breaks) for a random sample of about twenty (20) percent of the Class, and pay data for a random sample of about ten (10) percent of the Class. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk*/*Kullar*"). SA, ¶ 2.5. Defendants also provided written discovery responses regarding, among other things: the number of non-exempt employees who received wage statements from ACM Human Resources, LLC, and those separated; locations where these employees worked, with one being TreeSource Citrus Nursery; and responses regarding Defendants' written policies and actual practices as to the class. Khoury Decl., ¶ 21. Mediation data analysis revealed: an average Class Member hourly rate over the Class Period of approximately $17.39, with a corresponding overtime rate of $26.09; about five shifts worked per week by the Class; and an average workday, for Plaintiff, of about 8.5 hours, yielding about 2.5 hours of overtime per week. Khoury Decl., ¶ 22.

V. SUMMARY OF PROPOSED SETTLEMENT

A. Settlement Terms

ACMPC will pay a Gross Settlement Amount ("GSA") of $386,000 (SA, ¶ 3.1) based on 22,777 workweeks worked by the Class (SA, ¶ 4.1)[2] - which includes: (a) an Administration Expenses Payment to Administrator ILYM Group, Inc. ("ILYM" or "Administrator") not to exceed $6,850 (SA, ¶ 3.2.3); (b) a Class Counsel Fees Payment of not more than one-third of the GSA, currently estimated as $128,666.67 (SA, ¶ 3.2.2); (c) a Class Counsel Litigation Expenses Payment not to exceed $35,000 (SA, ¶ 3.2.2); (d) a Class Representative Service Payment not to exceed $7,500 to Plaintiff (SA, ¶ 3.2.1); and (e) PAGA Penalties of $11,580 —$8,685 to the LWDA (75%) and $2,895 (25%) to Aggrieved Employees (SA, ¶ 3.2.5).

[2] If the number of workweeks from the start of the Class Period through November 15, 2025 increase by more than 10%, to more than 25,055 Workweeks, ACMPC in its sole discretion will either: (a) increase the GSA by a proportionate amount for each additional workweek (for example, if the number of workweeks during this period increases by 11%, the GSA shall increase by 1%); or (b) adjust the end date of the Class Period by moving the date to an earlier date to avoid triggering the Escalator. SA, ¶ 9.

The remainder, estimated at $196,403.33, is the Net Settlement Amount. Khoury Decl., ¶ 23; SA, ¶ 1.27, Class Notice. Plaintiff has consented in writing to the division of attorneys' fees between Cohelan Khoury & Singer (50%) and Law Offices of Sahag Majarian II (50%). Contreras Decl., ¶ 12; Khoury Decl., ¶ 24. Current actual itemized costs total $29,580.09. Khoury Decl., ¶ 25, **Exhibit 3** thereto, Itemized Costs ($15,400.09); Declaration of Sahag Majarian II ("Majarian Decl."), ¶ 8 ($14,180.00). Plaintiff anticipates incurring about $226.24 in costs in filing the instant motion and motion for final approval. Khoury Decl., ¶ 26.

ACMPC will pay the employer's share of payroll taxes in addition to the GSA. SA, ¶ 3.1. None of the GSA will revert to ACMPC. *Id*. Uncashed checks will be transmitted to California Controller's Unclaimed Property Fund. SA, ¶ 4.4.3.

The Net Settlement Amount (est. $196,403.33) will be divided by the total number of Class Period workweeks (approximately 22,777), resulting in payment of approximately $8.62 per workweek to each Participating Class Member. Khoury Decl., ¶ 27; SA, ¶¶ 1.22, 3.2.4. The Aggrieved Employees' share of the $11,580 PAGA Penalties ($2,895) will also be divided by the total number of PAGA workweeks (approximately 11,955), resulting in payment of approximately $0.24 per workweek to each Aggrieved Employee. Khoury Decl., ¶ 28; SA, ¶¶ 1.23, 1.34, 3.2.4.1. The average Participating Class Member Payment will be $1,664.44 ($196,403.33/118 Class Members), and the average Individual PAGA Payment will be $33.28 ($2,895/87 Aggrieved Employees). Khoury Decl., ¶ 29.

B. Release of Claims

<u>Plaintiff</u> and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint or Plaintiff's PAGA Notices. SA, ¶ 5.1. Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code. SA, ¶ 5.1.1.

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All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint. The release will be for the Class Period. SA, ¶ 5.2.

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Action and the PAGA Notices. The release will be for the PAGA Period. SA, ¶ 5.3.

C. Settlement Administration and Notice

ACMPC will provide the Class Data to the proposed Settlement Administrator, ILYM, within 20 days of Preliminary Approval. SA, ¶¶ 1.8, 4.2. ILYM will mail a Class Notice to all Class Members within 14 days of receiving the Class Data. SA, ¶ 7.4.2; Declaration of Lisa Mullins on behalf of ILYM ("ILYM Decl."), ¶ 5. All Parties have agreed to the proposed language of the Class Notice. Khoury Decl., ¶ 30. For notices returned as undeliverable, ILYM will attempt to locate an updated address and will remail the notice within 3 business days. ILYM Decl., ¶ 6; SA, ¶ 7.4.3. Class Members will be given the opportunity to remain in, opt out, object (as a Participating Class Member), and to challenge the calculation of their workweeks. SA, ¶¶ 7.5, 7.6, 7.7. ILYM has a duty to perform, and will adequately perform, all duties outlined in the Settlement Agreement, including: establishing a website; email address, and toll-free number for class members; reviewing opt-out requests; creating weekly reports for Counsel; reviewing delivery challenges; and providing a declaration for final approval; and providing a declaration regarding disbursement. SA, ¶ 7.8; see also ILYM Decl., ¶¶ 4-9. Uncashed checks, after the void date, will be sent by ILYM to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure section 384, subd. (b). SA, ¶ 4.4.3.

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VI. ARGUMENT

A. The Settlement is Fair, Reasonable, and Adequate

In deciding whether to approve a proposed class action settlement the Court must find a proposed settlement is "fair, adequate and reasonable." *Dunk*, 48 Cal.App.4th at p. 1801. A proposed settlement is presumed fair where: (1) parties settle after extensive arms'-length negotiations; (2) sufficient investigation and discovery allow counsel and the Court to act intelligently; (3) counsel is experienced; and, (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at p. 1802. Here, the first three factors are met. The fourth *Dunk* factor cannot be known until Class notice and response. Khoury Decl., ¶ 31.

1. Serious, Informed, Non-Collusive Negotiations Led to Settlement

The Settlement was reached through arm's-length, non-collusive negotiations facilitated by Gig Kyriacou, an experienced and respected mediator. Khoury Decl., ¶ 32.

2. Discovery and Stage of the Proceedings Support Settlement

Plaintiff's Counsel investigated all claims and defenses before filing this action. When the Parties agreed to mediation, Plaintiff requested, and Defendants produced, all data and documents needed to assess potential liability. Investigation and informal discovery gave the Parties a clear understanding of their strengths and weaknesses before negotiations. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 410. Khoury Decl., ¶ 33.

3. Counsel are Highly Experienced in Similar Litigation

Plaintiff's Counsel have significant experience in wage and hour class actions. Khoury Decl., ¶¶ 1-10; Majarian Decl., ¶¶ 1-5. This allowed Counsel to compare the settlement with the risks of further litigation, including trial and appeals. Defense counsel, Daniel K. Klingenberger of Lebeau Thelen, and Julie Capell, Evelyn Wang and Tiffanie de la Riva of Davis Wright Tremaine LLP, are experienced wage and hour class action litigators who defended Defendants vigorously. Khoury Decl., ¶ 34.

B. The Settlement is a Reasonable Compromise of Claims

"[T]o ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of

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attempting to establish and collect on those claims by pursuing the litigation," information is presented to the Court, as a fiduciary for absent class members. *Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 129. Class Counsel relied on the data and documents produced by Defendants, including time and pay records, with the assistance of Plaintiff's consultant, to estimate Class damages and PAGA Penalties. Khoury Decl., ¶ 35.

Here, Defendants contend that their employment policies and practices complied with applicable wage and hour laws. Khoury Decl., ¶ 36. They further argue that Plaintiff's evidence does not establish the existence of a common policy or practice that violates California wage and hour laws, but instead shows that any alleged violations stem from individualized and isolated circumstances that are not amenable to class-wide determination. *Id*. Defendants are represented by experienced counsel and would undoubtedly have raised these and additional arguments in continued litigation. *Id*. If Defendant's defenses were successful in a continued litigation, it would severely reduce the damages recoverable to the proposed Class. *Id*. As explained below, the GSA of $386,000, provides a fair outcome, representing *more* than the realistic value of $309,730.12[3] of the class wage claims and about 58% of the realistic value of the combined class and PAGA claims ($386,000/$670,075.12[4]). Khoury Decl., ¶ 37.

1. Unpaid Regular Wages and Liquidated Damages

Employers must provide at least minimum wages for all hours employees work or are subject to their employer's control. Labor Code § 1194. Liquidated damages equal to unpaid minimum wages shall also be awarded where there is no good faith defense to non-payment. Labor Code § 1194.2.

Plaintiff alleges that Defendants did not pay wages for all time subject to Defendants' control. Specifically, Plaintiff contends for part of the Class Period she was required to take a "TMPR" test before clocking in, that it took about ten to fifteen minutes, and that Defendants did

[3] $4,284.12 (regular wages) + $1,567.24 (liquidated damages) + $6,878.30 (overtime wages) + $89,120.71 (meal period premiums) + $89,120.71 (rest period premiums) + $51,200 (wage statements) + $67,559.04 (waiting time) = $309,730.12. *Id*.

[4] $309,730.12 (class) + $360,245 (PAGA) = $670,075.12. *Id*.

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not track this time, "instead paying for 0.12 hours (7.2 minutes) per check from June 22, 2020 through February 15, 2021, and for 0.05 hours (3 minutes) per check from February 22, 2021 to June 14, 2021, when these checks ended." Khoury Decl., ¶ 38; Complaint ¶ 37. These TMPR tests were recorded on wage statements with artificial time entries that did not reflect actual reporting time. Khoury Decl., ¶ 39. For instance, Plaintiff's time records, for 09/08/2020, begin: "Time in: 05:00 AM," "Time out: 05:07 AM," "TMPR Test," "Time in: 07:02 AM," reflecting an artificial seven minutes paid for the TMPR test, and a start time of 7:02 a.m. Khoury Decl., ¶ 40. Defendants contend they fairly compensated the Class for TMPR test time based on how long these TMPR tests typically took, that certification of this claim would be difficult given individualized inquiries, and that their decision to compensate TMPR test time in the manner described was made in good faith. Khoury Decl., ¶ 41.

Plaintiff calculated maximum damages for the TMPR test underpayment claim of $21,420.58, assuming an average of five minutes underpaid per shift from June 22, 2020 through June 14, 2021.[5] Liquidated damages for this were calculated as $15,672.38.[6] No damages were assessed for the split shift and reporting time claims, as these were premised on the incorrect understanding that the "TMPR Test" times were *actual* clock in and out records, rather than artificial times input by Defendants, as explained above. Khoury Decl., ¶ 42.

Plaintiff discounted unpaid regular wages by 80%, to **$4,284.12**, and liquidated damages by 90%, to **$1.567.24**, given Defendants' defenses and the risks of continued litigation. Khoury Decl., ¶ 43.

2. Unpaid Overtime Wages

Overtime must be paid at one and one-half times an employee's regular rate of pay for all overtime hours worked. See Labor Code §§ 560, 860. Plaintiff alleges that Defendants did not

[5] The Class Period, from February 8, 2018 through November 15, 2025, is approximately 94 months. The period during which TMPR testing was done off-the-clock, from June 22, 2020 through June 14, 2021, is approximately 12 months, or about 13 percent of the class period, meaning 2,691 workweeks (22,777 workweeks x .13). *Id*. Assuming five shifts per workweek, 25 minutes, or .416 hours, would have been underpaid per workweek. *Id*. Thus, maximum exposure is calculated as follows: $17.39 x .416 hours x 2,691 workweeks = $21,420.58. *Id*.
[6] $14,00 (2021 minimum wage) x .416 hours x 2,691 workweeks = $15,672.38. *Id*.

pay all overtime wages as required by the labor code for employees working in an agricultural occupation. Complaint, ¶ 39. Moreover, Plaintiff alleges Defendants did not pay overtime wages at the correct regular rate of pay, by failing to include records-identified bonuses in employees' regular rates of pay when paying overtime wages. *Id*. Defendants contend that they paid overtime properly, and that none of the bonuses paid were required to be included in the regular rate of pay as they were discretionary bonuses, given that Defendants retained discretion as to the fact and amount of these payments, per 29 CFR § 778.211. Khoury Decl., ¶ 44.

Plaintiff calculated underpaid overtime wages, due to failure to pay in accordance with the schedule provided in Labor Code section 860, at <u>$28,265.44</u>.[7] Plaintiff also assessed that in the sampled data, only 83 excel pay entries of 10,332 analyzed were paid for a bonus ("BON"), with the average bonus being for several hundred to over one-thousand dollars. Khoury Decl., ¶ 45. Plaintiff calculated an estimate of $52.72 underpaid in overtime wages each of the 83 instances in which a bonus was earned, resulting in $4,375.76 in damages.[8] Khoury Decl., ¶ 46. Accounting for extrapolations, Plaintiff calculated damages of <u>$6,126.06</u>.[9] Thus Plaintiff estimated Defendants underpaid overtime wages by approximately <u>$34,391.50.</u> Khoury Decl., ¶ 47. Plaintiff discounted underpaid overtime wages by 80%, to **<u>$6,878.30</u>**, given Defendants' defenses, the risks of continued litigation, and that further analysis might reveal that some instances bonuses were earned in periods with no overtime pay. Khoury Decl., ¶ 48.

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[7] At mediation, Plaintiff's consultant analyzed the records of a sample of the 818 employees who received wage statements from ACM Humna Resources, LLC, including those employed at TreeSource Citrus Nursery, and found $201,896.00 in related extrapolated damages. As the 118-member Class of TreeSource Citrus Nursery represents about 14% of this group, Plaintiff assessed 14% of this amount as damages for the present settlement class, or $28,265.44. *Id*.

[8] Assuming a Class member worked about 2.5 hours of overtime in each pay period in which a bonus was earned, Plaintiff made the following calculations: ($17.39 average hourly rate x 8) + ($26.09 average overtime rate x 2.5) = $139.12 + $65.23 + $1,000 = $1,204.43. ($17.39 x 8) + $1,000 = $1,139.12/40 regular hours per week= $28.48 regular rate x 1.5 = 42.71 correct overtime rate. As such, Plaintiff arguably should have been paid ($17.39 x 8) + $1,000 + ($42.71 x 2.5) = $139.12 + $1,000 + $118.03 = $1,257.15. If this is the case, the underpayment in overtime wages would be $52.72 ($1,257.15 - $1,204.43). *Id*.

[9] $4,375.76 derived from a 10% sample of pay records for 818 employees can be extrapolated to $43,757.60 for the entire group. Given that the settlement class is 118/818 (14%), this should then be reduced to $6,126.06 ($43,757.60 x .14). *Id*.

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3. Meal and Rest Period Premium Wages

Employers must provide a first uninterrupted 30-minute meal period before the end of the fifth hour of work and a second such meal period before the end of the tenth hour of work. Labor Code § 512; *see also Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1005. If records show a missed, late, short, or interrupted meal period there is a presumption of liability, which the employer may rebut. *Donohue v. AMN Servs., LLC* (2021) 11 Cal. 5th 58, 77. Employers must also authorize and permit ten minutes' net rest for every four hours or major fraction thereof worked. Wage Order 14-2001, § 12. Failure to provide a meal or rest period requires the employer to pay the employee one hour of pay at the employee's regular rate of pay. Labor Code § 226.7.

Plaintiff alleges, and time records reveal, that meal periods were not always adequately provided by Defendants. Specifically, Plaintiff alleges meal periods were "routinely less than 30 minutes" due to required walk time to a break room, hand-washing time, and donning and doffing time, which she alleges was included in the 30-minute timeframe. Khoury Decl., ¶ 49; Complaint ¶ 40. Plaintiff alleges rest periods were less than 10 minutes for the same reasons. Khoury Decl., ¶ 50; Complaint ¶ 41. Plaintiff further alleges, as to meal periods, that because TMPR test time was not recorded from June 22, 2020 through June 14, 2021, meal periods that appear to be on-time, may actually have been late. Khoury Decl., ¶ 51; Complaint ¶ 40. Beyond this, sampled time records, analyzed by Plaintiff's consultant, revealed an average meal period violation rate (i.e. short, late, or missed) of nine (9) percent. Khoury Decl., ¶ 52.

Defendants contend that they adequately informed Plaintiff and the Class of their entitlement to meal and rest periods, lawfully provided these breaks, that employees were not required to go to the break room during breaks (but chose to do so), and that employees were required to wash their hands and don and doff while clocked in. Khoury Decl., ¶ 53.

Maximum meal and rest period premium wages were calculated, each, as: 22,777 workweeks x 5 shifts per workweek x $17.39 per hour x 1 premium = <u>$1,980,460.15</u>. Plaintiff multiplied this amount by 9%, the rate derived under *Donohue* for missed, late, or short meal periods to get $178,241.41. Plaintiff assumed a rest period premium violation of about the same

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amount, or $178,241.41. Plaintiff reduced the amount of these premiums by 50%, given Defendant's defenses and the risks of continued litigation, to **$89,120.71** each. Khoury Decl., ¶ 54.

4. Wage Statement Penalties

Plaintiff contends Defendants failed to list the correct employer (TreeSource Citrus Nursey) on wage statements, failed to include hourly rates of pay, and due to mispayments, failed to issue accurate wage statements and maintain accurate records. Khoury Decl., ¶ 55; Complaint ¶ 42. Defendants contend they accurately listed ACM Human Resources, LLC and hourly rates on wage statements, and that they paid and recorded payments properly. Khoury Decl., ¶ 56. Maximum wage statement penalties were calculated as: 64 employees[10] x $4,000 maximum penalty under section 226(e) = $256,000. For a realistic exposure, Plaintiff discounted wage statement penalties by 80%, to **$51,200**, given Defendant's defenses, the risks of continued litigation, and given many employees likely worked fewer than the 41 pay periods which would entitle them to the maximum $4,000 in penalties. Khoury Decl., ¶ 57.

5. Waiting Time Penalties

Plaintiff alleges that because Defendants failed to pay certain wages, as discussed herein, final wages were underpaid, as they did not include these amounts. Khoury Decl., ¶ 58; Complaint ¶ 43. Defendants allege they paid wages properly, and that any underpayments were made in good faith. Khoury Decl., ¶ 59. Maximum waiting time penalties were calculated as: 74 former

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[10] The proposed Class contains 118 non-exempt employees through September 25, 2025. The Class Period, from February 8, 2018 through November 15, 2025, is approximately 94 months. The one-year wage statement penalties period, which is identical to the PAGA Period, from August 12, 2021 through November 15, 2025, is approximately 51 months (54% of the class period). Thus, approximately 64 employees could be entitled to wage statement penalties (118 x .54). *Id*.

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employees[11] x 30 days x average daily wage of $152.16[12]= $337,795.20. For a realistic exposure, Plaintiff discounted waiting time penalties by 80%, to **$67,559.04**, given Defendants' defenses and the risks of continued litigation. Khoury Decl., ¶ 60.

6. PAGA Claims

Plaintiff submitted her PAGA notices on February 8, 2022 and December 23, 2025, and pled PAGA claims under Labor Code sections 201-203, 226, 226.7, 510, 512, 860, 1174, 1194, and 1198. Khoury Decl., ¶ 61. Plaintiff pled violations under PAGA for alleged failures to: pay minimum and overtime wages, pay split shift premium wages, pay reporting time pay, provide meal periods, provide rest periods, provide accurate, itemized wage statements, maintain accurate records, and maintain reasonably comfortable temperature in the work facility. Khoury Decl., ¶ 62.

Maximum potential PAGA penalties owed were calculated for the PAGA Period. Khoury Decl., ¶ 63. Maximum penalties were calculated for the 11,955 workweeks[13] in which one of the six violations, which could have happened weekly, could have occurred, at $100 per workweek: Sec. 1194 (unpaid minimum wages) – $1,195,000; Sec. 860 (unpaid overtime wages) – $1,195,000; Sec. 226.7 (meal) – $1,195,000; Sec. 226.7 (rest) - $1,195,000; Sec. 226 (wage statements) - $1,195,000; Sec. 1198 (maintain comfortable temperature) – $1,195,000. Khoury Decl., ¶ 64. For final pay, maximum penalties were calculated for approximately 74 separated employees[14] assuming each was underpaid in final pay, at $7,400 (74 x $100). Khoury Decl., ¶

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[11] The proposed Class contains 118 non-exempt employees through September 25, 2025. Mediation data analysis revealed that approximately 72 percent of those analyzed were former employees. The Class Period, from February 8, 2018 through November 15, 2025, is approximately 94 months. The three-year waiting time penalties period, from February 8, 2019 through November 15, 2025, is approximately 82 months. 82 months is 87 percent of 94 months. Therefore, Plaintiff calculated that approximately 87 percent of former employees would be potentially entitled to waiting time penalties. Thus, approximately 74 employees in the Class could be entitled to waiting time penalties. (118 x .72 x .87). *Id*.

[12] An average daily wage was thus approximately ($17.39 x 8 hours) + ($26.08 x 0.5 hours), or $139.12 + $13.04, which equals $152.16. *Id*.

[13] Defendants paid the Class weekly, so workweeks and pay periods are the same for calculating PAGA penalties. *Id*.

[14] If 74 of 118 employees were separated during the Class Period (63%), Plaintiff assumes about 63% of the 87 Aggrieved Employees were separated during the PAGA Period, or about 55 employees. *Id*.

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65. For recordkeeping, maximum penalties were calculated for 55 employees, assuming each was entitled to the section 1174.5 $500 penalty, yielding $27,500. Khoury Decl., ¶ 66. Thus, maximum liability was calculated as: <u>$7,204,900</u> [($1,161,000 x 6) + $7,400 + $27,500]. Khoury Decl., ¶ 67.

A court has authority to completely reduce penalties, as long as not to "zero." *Thurman v. Bayshore Transit Management, Inc*. 203 Cal. App. 4th 1112, 1135 (2012); *see also Carrington v. Starbucks Corp*. 30 Cal. App. 5th 504, 517 (2018) (Plaintiff requested "nearly $70 million in penalties;" trial court's $150,000 award upheld on appeal). Plaintiff believed reasonable exposure was less than 5% of the maximum, or **<u>$360,245</u>**, based on class claim defenses, the fact that PAGA penalties were much greater than class damages, and the ability of the court to reduce penalties nearly to zero. Khoury Decl. ¶ 68.

The $11,580 PAGA Penalties, which represents 3% of the GSA ($11,580/$386,000), are well within the range of allocations approved by California courts.[15] Khoury Decl., ¶ 69. Finally, the Motion and exhibits were provided to the LWDA on the date filed. Khoury Decl., ¶ 70, **Exhibit 4** thereto, LWDA Confirmation of Receipt.

C. The Attorneys' Fees Requested are Reasonable.

Class Counsel seek attorneys' fees up to $128,666.67, representing one-third of the GSA. This request is reasonable and should be granted. Khoury Decl., ¶ 71. Courts often award fees equaling one-third of the gross recovery in class action settlements. "[R]egardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n. 11; *see e.g., Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 458-87 (affirming trial court's granting of a fee request for one-third of a $19 million settlement). Class Counsel have been awarded one-third of the common fund in numerous representative actions. Khoury Decl. ¶ 72, 82 Class

[15] "In wage and hour class action cases that settle, [ ] very little of the total settlement is paid to PAGA penalties in order to maximize payments to class members." *Magadia v. Wal-Mart Assocs.* (2019) 384 F. Supp. 3d 1058, 1101; *see also Mejia v. Walgreen Co*. (E.D. Cal. Mar. 24, 2021) 2020 U.S. Dist. LEXIS 220685, *26 ("courts frequently approve settlements…that minimize the total amount of the settlement that is paid to PAGA penalties in order to maximize payments to class members.").

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Counsel will provide their time records at final approval. Khoury Decl., ¶ 73.

D. The Service Payment Requested is Reasonable.

Plaintiff seeks a $7,500 service payment for risks she took, the work she did on behalf of other employees, the money those employees will receive, and for having to wait longer to resolve her claims than she likely would have had to had she pursued an individual case. Contreras Decl., ¶ 7. Plaintiff estimates she spent approximately 48 to 55 total hours working on this case with her attorneys, which is time she could not spend with family or friends or on other personal activities. *Id.*, ¶ 8. Plaintiff also executed a general release and 1542 waiver in conjunction with the Settlement, unlike any other Class Member. SA, ¶¶ 5.1.1, 5.2. For all these reasons, this Court should award Plaintiff $7,500 in recognition of her service to the Class and general release. *Id.*

VII. CONDITIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE

When an ascertainable and sufficiently numerous class exists, with a well-defined community of interest, and class litigation is superior to alternate means, certification is appropriate. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1021. "Community of interest . . . embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Dunk*, 48 Cal.App.4th at p. 1806 (internal citation omitted). And in determining whether class treatment is superior, "the trial court must weigh the respective benefits and burdens of class litigation," to assess whether, by allowing class treatment, "substantial benefits [will] accrue to both the litigants and the court." *Soderstedt v. CBIZ Southern California, LLC* (2011) 197 Cal.App.4th 133, 156.

Here, Plaintiff contends that for settlement purposes only, the Class is ascertainable from Defendants' payroll and time records. See *Rose v. City of Hayward*, 126 Cal.App.3d 926 (1981) (finding that "Class Members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records"). Thus, this requirement for settlement purposes only is met. Khoury Decl., ¶ 74.

The proposed settlement class is also sufficiently numerous. The numerosity requirement

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605 C Street, Suite 200
San Diego, CA 92101

is met if the class is so large that joinder of all members would be impracticable. *In re Tobacco II Cases* (2009) 46 Cal. 4th 298, 318. Here, Defendants' records identify approximately 118 proposed settlement Class Members. Khoury Decl., ¶ 75.

The requirements for a well-defined community of interest are also satisfied for settlement purposes. The commonality requirement is met if there are questions of law and fact common to the class. *See Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. While the Parties dispute whether a class would be appropriate if litigation were to continue, here, for settlement purposes only, Plaintiff contends there are questions of law and fact common to the class. Plaintiff contends that common questions include whether each of the Class Members received compliant meal periods, rest periods, wage statements, accurate pay during employment, and accurate final pay. Khoury Decl., ¶ 76. Therefore, for settlement purposes, the commonality requirement is satisfied. See *Hanlon, supra*, 150 F.3d at 1019-20.

Further, while Plaintiff acknowledges that factual differences may exist between the Class Representative and the Class Members, she contends that her claims are typical of the claims of the Class Members because she worked at the same location as, and was generally subject to the same policies and practices as, the other Class Members. *See* Contreras Decl., ¶¶ 3-5; Khoury Decl., ¶ 77.

The requirement that a putative class representative must show that she can adequately represent the class is met here, too, for purposes of settlement. "Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." *McGhee v. Bank of Am*. (1976) 60 Cal.App.3d 442, 450. Plaintiff has no interests against the interests of the Class, spent significant time assisting in this action, and will continue to as required. *See* Contreras Decl., ¶¶ 6-11; Khoury Decl., ¶ 78. As to adequacy of counsel, Plaintiff's attorneys are qualified to conduct the litigation. Khoury Decl., ¶¶ 1-10; Majarian Decl., ¶¶ 1-5.

Finally, class treatment is superior here to individualized treatment because class treatment will benefit both the litigants and the court. Khoury Decl., ¶ 79. Specifically, class treatment is warranted here because it will "allow[] claims of many individuals to be resolved at

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San Diego, CA 92101

the same time, eliminate[] the possibility of repetitious litigation and afford[] small claimants with a method of obtaining redress for claims which otherwise would be too insignificant to warrant individual litigation." See *Bufil v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1208. Khoury Decl., ¶ 80. For all these reasons, conditional class certification for settlement purposes only is warranted. Khoury Decl., ¶ 81.

VIII. CONCLUSION

Plaintiff requests the Settlement be preliminarily approved, Notice of Class Action Settlement approved and ordered to be disseminated to the Class, ILYM be appointed the Administrator, Cohelan Khoury & Singer and Law Offices of Sahag Majarian II be appointed as Class Counsel, Plaintiff Gabriela Contreras be appointed Class Representative, and Final Approval Hearing date be set.

Respectfully submitted,

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

Dated: March 24, 2026

By: Rosemary Khoury
Isam C. Khoury, Esq.
Rosemary C. Khoury, Esq.
Attorneys for Plaintiff Gabriela Contreras, on behalf of herself and all others similarly situated

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101