B. James Fitzpatrick (SBN: 129056)
Alison L. Baker (SBN: 193601)
FITZPATRICK & SWANSTON
555 S. Main Street
Salinas, CA 93901
Telephone: (831) 755-1311
Facsimile: (831) 755-1319

Attorneys for Plaintiff,
Jose Barcenas Alvarado

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

JOSE BARTENAS ALVARADO, Plaintiff, v. GREENLIGHT DRYWALL, INC.; and DOES 1 through 50, inclusive, Defendants.	Case No. 23CV001526 **DECLARATION OF B. JAMES FITZPATRICK IN SUPPORT OF PLAINTIFF'S MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT** Date: December 5, 2025 Time: 8:30 a.m. Dept.: 14 Complaint Filed: May 11, 2023

I, B. James Fitzpatrick, hereby declare and state as follows:

1. I am an attorney duly admitted to practice in the State of California and am the owner of the law firm of Fitzpatrick & Swanston, counsel of record for Plaintiff Jose Barcenas Alvarado ("Plaintiff"). I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

2. I support this settlement as fair, reasonable, and adequate, and in the best interest of the PAGA Members as a whole.

3. Plaintiff's Counsel's application for an award of attorneys' fees in the amount of $9,165.75 and reimbursement of litigation costs associated with the PAGA claim in the amount of $3,795.34 is reasonable and fair. These amounts are well within what is reasonable and customary in both wage and hour settlements and representative action settlements in general and is based on the skill displayed by Counsel, the effort and resources invested in this case by Counsel, the factual and legal complexities of this case, the importance of the interests which are the subject of this litigation, the risks undertaken by Counsel, and the degree of success achieved by Counsel.

4. Pursuant to the terms of the proposed PAGA Settlement Agreement, Defendant Greenlight Drywall, Inc. ("Defendant") will pay the total amount of Twenty-Seven Thousand Five Hundred Dollars and 00/100 Cents ($27,500.00) (the "Gross Settlement Payment"). This amount encompasses a settlement of PAGA claims asserted in this lawsuit, Plaintiff's counsel's attorneys' fees and costs associated with the PAGA claim, and settlement administration costs.

5. Based on the amounts above, the PAGA Fund will be at least $12,038.91. Pursuant to the PAGA, this amount includes $9,029.18 to be distributed to the California Labor and Workforce Development Agency ("LWDA"), and $3,009.73 to be distributed to the "PAGA Settlement Members," "all individuals who are or previously were employed by Defendant in California, who are or were classified as hourly, non-exempt employees, at any time during the PAGA Period." The proposed settlement, moreover, does not release any substantive claims of PAGA Settlement Members, merely their rights to bring PAGA claims

predicated on the same violations of the Labor Code raised in this Action that accrued during the PAGA Period.

6. In light of the above, the proposed settlement constitutes an adequate, fair, and reasonable settlement on behalf of the State of California and PAGA Settlement Members and accomplishes the goals of PAGA.

7. **<u>Summary of the Litigation and Settlement</u>:** Defendant Greenlight Drywall, Inc. ("Defendant") is a California Corporation engaged in the profession of drywall that provides services for residential and commercial projects, such as new construction, remodels, and repairs. Defendant's practice is located at 8518 Church Street #5, Gilroy, CA 95020.

8. On September 28, 2022, Plaintiff served a Notice of Violations pursuant to the California Private Attorneys General Act ("PAGA") on the Labor & Workforce Development Agency ("LWDA") and Defendant.

9. On May 11, 2023, Plaintiff filed his Complaint alleging individual Labor Code claims and a representative claim pursuant to the Private Attorney General Act, Labor Code 2698, et seq. (the "PAGA").

10. On November 29, 2023, Plaintiff filed a First Amended Complaint ("FAC"). With the FAC, Plaintiff added individual claims under the Fair Employment and Housing Act ("FEHA"), and named Joe Faria as an additional named defendant.

11. On August 12, 2024, Plaintiff filed a Second Amended Complaint ("SAC") to: (1) correct Plaintiff's legal name; (2) correct Mr. Faria's legal name; and (3) clarify the scope of Plaintiff's individual claims under FEHA. The Parties have entered into a separate confidential settlement agreement relating to Plaintiff's individual claims.

12. On July 7, 2025, the Parties participated in a private mediation conducted by the Honorable Timothy Volkman (Ret.), a neutral with extensive experience in employment and wage-and-hour matters.

13. During the mediation, the Parties engaged in meaningful and good-faith negotiations, exchanging information and evaluating the strengths and risks associated with their respective positions. Thereafter, the Parties entered the proposed representative action

settlement now presented to the Court for approval, a true and correct copy of which is attached as Exhibit A to the Declaration of B. James Fitzpatrick.

14. After reaching the agreement in principle to resolve the representative claim, Plaintiff's individual FEHA claims were resolved in a separate confidential settlement agreement. If the Court so requests, the Parties agree to provide information regarding Plaintiff's confidential individual settlement for the Court's review.

15. The material terms of the Settlement are described below and set forth in detail in the Settlement Agreement attached hereto as **Exhibit A**.

16. **The PAGA Settlement Members:** The "PAGA Settlement Members" affected by this Settlement include "all individuals who are or previously were employed by Defendant in California, who are or were classified as hourly, non-exempt employees, at any time during the PAGA Period." The PAGA Period commences on September 28, 2021 through July 7, 2025.

17. Based upon Defendant's records, there are 167 PAGA Settlement Members. Defendant also represents that the total number of pay periods worked by PAGA Settlement Members during the PAGA Period is approximately 4376 ("PAGA Pay Periods").

18. **The Gross Settlement Amount:** The Settlement Agreement requires Defendant to pay the Gross Settlement Payment of Twenty-Seven Thousand Five Hundred Dollars and 00/100 Cents ($27,500.00). The terms of the Settlement Agreement provide for an award of attorneys' fees and reimbursement of litigation costs to Plaintiff's counsel, and settlement administration costs.

19. **Attorneys' Fees and Reimbursement for Litigation Costs:** As part of the Settlement Agreement, Defendant does not object to Plaintiff's counsel's request for attorneys' fees of $9,165.75 (33.33% of the Gross Settlement Payment), plus reimbursement of litigation costs in the amount of $3,795.34, subject to the Court approving this Settlement. Any portion of the attorneys' fees and costs not approved by the Court will be added to the PAGA Fund.

20. **Settlement Administration Costs:** The Settlement Agreement provides for the payment of fees and expenses reasonably incurred by the Settlement Administrator. The

Parties have agreed to utilize Phoenix Class Action Administration Solutions ("Phoenix Settlement Administrators") to administer the Settlement, with the administration costs estimated not to exceed $2,500.00.

21. **<u>The PAGA Fund:</u>** The PAGA Fund is the balance of the Gross Settlement Payment remaining after the deduction of the Court-approved: (i) attorneys' fees ($9,165.75); (ii) litigation costs ($3,795.34); and (iii) Settlement Administration Costs ($2,500.00). Counsel estimates that the PAGA Fund will be at least $12,038.91. In light of the Confidential Individual Settlement resolving his individual wage and hour and FEHA claims, Plaintiff does not request a service award as the PAGA representative.

22. Pursuant to the PAGA, seventy-five percent (75%) of the PAGA Fund, or $9,029.18, will be distributed to the LWDA for PAGA penalties. The remaining twenty-five percent (25%) of the PAGA Fund, or $3,009.73 will be distributed to the PAGA Settlement Members.

23. The portion of the PAGA Fund distributed to the PAGA Settlement Members will be distributed on a pro rata basis, based on the number of pay periods each PAGA Settlement Member worked for Defendant during the PAGA Period divided by the aggregate total number of pay periods worked by all PAGA Settlement Members

24. Defendant has represented that there are approximately 167 PAGA Settlement Members who collectively worked a total of approximately 4,376 pay periods during the PAGA Period.

25. Based thereon, on a raw average, each PAGA Settlement Member may potentially recover approximately $18.02 ($3,009.76 ÷ 167 PAGA Members), or approximately $0.69 ($3,009.76 ÷ 4376 pay periods) per pay period, from the portion of the PAGA Fund attributable to the PAGA Settlement Members. The amount any particular PAGA Settlement Member will be entitled to recover will fluctuate depending on the number of pay periods he or she worked as a non-exempt employee in California during the PAGA Period. This is fair, as it directly allocates greater penalties to individual PAGA Settlement Members who have allegedly suffered greater harm.

26. **Uncashed Checks:** Funds from any checks that have not been cashed within 180 days of issuance do not revert and shall be paid to the designated cy pres recipient: Watsonville Law Center. Neither counsel nor their respective firms have any relationship with the proposed cy pres recipient that would create an actual or potential conflict of interest. The Parties further agree that the proposed cy pres recipient, satisfies the legislative intent set out in Code of Civil Procedure § 384(a), in that the organization helps further the purposes of the underlying action and promote justice for all Californians.

27. **The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of Litigation:** Although Plaintiff is reasonably confident that he would prevail at trial, proceeding in litigation entails significant risk on the underlying merits of Plaintiff's theory, in addition to the still-evolving law under PAGA.

28. **Defendant's Ability to Pay a Large Judgment**: As a preliminary matter, Courts are to consider the amount of money that a defendant has available. A defendant's ability to pay a judgment larger than that provided by the proposed settlement is a relevant consideration for the court. Here, in light of the size of the PAGA Group and the number of pay periods and claims, there is a significant risk that Defendant would be unable to pay a large settlement or a large judgment, if one were to be required or have occurred. Defendant argued that if Plaintiff litigated this case through trial and was successful, Defendant would be pushed to insolvency. Accordingly, even if Plaintiff succeeded, a judgment may not have been collectable. Thus, the settlement is fair, reasonable, and adequate, given the inherent risks of litigation, including the substantial risks and the costs of pursuing such litigation. The settlement is the result of extensive arm's-length negotiations between the Parties and their counsel and was facilitated by an experienced and neutral mediator.

29. **Plaintiff's Claims are Contested:** Plaintiff asserts that his representative PAGA claims are based on the allegations that Defendant failed to pay premium overtime wages, failed to provide off-duty meal and rest periods, failed to reimburse employees for work-related expenses; and failed to provide accurate itemized wage statements. Defendant argued that Plaintiff's claims were unreliable and based on estimates of the times he worked.

30. **Unpaid Wages:** Plaintiff alleges that Defendant failed to pay for all hours worked. According to Plaintiff, Defendant regularly required employees to perform work "off the clock," including time spent traveling between the Gilroy office and various job sites in Monterey, Marina, Santa Cruz, Fremont, and San Jose, without compensation. Plaintiff also maintains that Defendant failed to pay overtime premium wages for hours worked in excess of eight per day or forty per week, and on certain days, employees were only paid for five hours despite having worked full eight-hour shifts. Plaintiff maintains that Defendant's results in unpaid overtime premium wages, and are inconsistent with California law and regulatory scheme.

31. **Unlawful Meal and Rest Periods:** Plaintiff also alleges that Defendant failed to provide timely and compliant meal and rest periods. Plaintiff alleges that he and the other aggrieved employees regularly worked through meal and rest breaks or received interrupted or shortened breaks due to work demands at construction job sites. Plaintiff and other employees were occasionally permitted to take a lunch, but it was not always 30 minutes and was rarely duty-free. Defendant's records also show that employees were not paid premium wages for missed, late, or interrupted meal and rest periods. Defendant contends that it made compliant breaks available and was not obligated to ensure that no work occurred during those times.

32. Defendant disputed the existence of a common policy that required employees to miss and/or interrupt their breaks to perform work-related tasks.

33. **Failure to Reimburse Business Expenditures:** Plaintiff further alleged that Defendant regularly and consistently violated Labor Code section 2802 by failing to reimburse employees for expenses incurred in the performance of their duties, including expenses associated with the use of personal phones for mandatory work-related phone calls or messages. Specifically, Plaintiff and other employees were required to use their personal cell phones to receive daily work assignments, coordinate job site locations, and communicate with supervisors. Defendant denied Plaintiff's allegations. According to Defendant, employees were not required to use a personal cell phone to communicate before, during, or after the workday. Thus, according to Defendant, the decision to use a cell phone for business purposes

is personal and not required by company policy.

34. **Wage Statements:** With respect to Plaintiff's wage statement claim, as a further consequence of Defendant's failure to record the actual hours worked by Plaintiff and the employees, failure to provide premiums for meal and rest periods, and failure to reimburse for work-related expenses, Defendant failed to provide the employees with complete and accurate itemized wage statements.

35. **The Potential Value of the PAGA Claims:** Although Plaintiff's Counsel believe there is merit to Plaintiff's allegations, Plaintiff's Counsel acknowledges a legitimate controversy exists as to each allegation. In other words, based on Plaintiff's Counsel's investigation and analysis, the maximum exposure did not comport with the reasonable exposure that Defendant faced. Specifically, Defendant argued that it paid all overtime premium wages, that it maintained compliance with all its meal and rest period obligations, and that any missed rest and meal period was solely the result of employees' voluntary choice, and that it did not require its employees to use its personal cell phones, and for the wage statements that were allegedly inaccurate, Defendant asserts the employees suffered no actual damage or harm as a result. Here, Plaintiff's Counsel is aware that Defendant could make a compelling argument that the award of PAGA penalties would be confiscatory. Indeed, total PAGA exposure vastly exceeds the value of alleged unpaid wages, and a full penalty award could cripple Defendant's business and result in bankruptcy. Due to the discretionary nature of PAGA penalties, PAGA civil penalties are difficult to evaluate.

36. Based on the data provided by Defendant *prior* to mediation, Plaintiff's Counsel estimated 30 aggrieved employees who worked a total of 5,910 pay periods. (Fitzpatrick Decl. ¶ 36.) Assuming a $100.00 civil penalty per pay period (total 5,910 estimated pay periods), Defendant's ***maximum*** exposure for civil penalties under PAGA was estimated to be $591,000.00 ($100 x 5,910 pay periods). Considering due process concerns related to penalizing Defendant disproportionately to the amount of damages at issue, and the discretionary nature of awarding penalties, it is reasonable to assume for resolution purposes, that a violation occurred in approximately three-tenths (or 0.30) of all pay periods resulting in

a ***realistic, risk-adjusted*** exposure of $177,300.00 ($591,00.00 maximum exposure x 0.30).

37. When applying the correct pay period data—reflecting 4,376 total pay periods rather than the estimate used at mediation—Defendant's *maximum* exposure under PAGA is $437,600, based on a $100.00 penalty per pay period ($100 x 4,376 pay periods). Applying the same risk-adjustment factor of three-tenths (or 0.30), the *realistic*, *risk-adjusted* exposure would be $131,280.00.

38. assumptions, the proposed settlement of $27,500.00 represented approximately 15% of the realistic, risk-adjusted exposure ($27,500 [GSA] ÷ $177,300.00) and 0.05% of the maximum exposure ($27,500 [GSA]÷ $591,000.00). Using the correct number of pay periods, which is 4,376, the proposed settlement of $27,500.00 now represents approximately 21% of the realistic, *risk-adjusted* exposure ($27,500.00 [GSA] ÷ $131,280.00) and 0.06% of the maximum exposure ($27,500.00 [GSA] ÷ $437,600), further supporting the fairness and adequacy of the settlement.

39. **The Attorneys' Fees are Reasonable:** With respect to Plaintiff's Counsel's lodestar, Plaintiff's Counsel will have expended approximately 49.2 hours (43 attorney hours + 6.2 paralegal hours) litigating this case, which includes anticipated time spent after approval responding to correspondence and phone calls from PAGA Settlement Members, the Settlement Administrator, and defense counsel. Attached hereto as **Exhibit B** is a true and correct copy of a detailed summary of tasks and hours spent by this firm in litigating this case.

40. Plaintiff's counsel's skill and experience justify the requested rates. Plaintiff's counsel has significant experience in the area of employment and wage and hour actions. Specifically, Plaintiff's counsel's practice focuses on representing employees in employment matters, particularly wage and hour cases. As such, based on the hours and reduced hourly rate of $595.00, Plaintiff's Counsel's lodestar amount through the finalization of this settlement – without a multiplier – will be approximately $25,585.00.

41. **Experience/Qualifications**: I am familiar with all aspects of this case and all tasks undertaken by the various members of this firm in litigating this case. As a result of my firm's diligence in pursuing the factual and legal issues presented by this case, we were able to

realistically assess the claims, prepare damages, and exposure. All work performed by our office is done on a contingency basis. Our firm has received no compensation for the time invested or expenses incurred in litigating this case. We have prosecuted this litigation up to this point, taking the risk that we ultimately would not receive any compensation for our work.

42. The hourly rate for attorneys in this firm is $800.00, and the hourly rate for paralegals is $185.00. Since at least 2020, I have been approved at hourly rates of $750.00 and $800.00 per hour by various Courts, in several matters, including, in the matters entitled: *Jose Antonio Ortiz Arrellano v. Rocha Brothers Farms, LLC*, Santa Cruz County Superior Court, Case No. 21CV01286; *Sione Fuapau v. LHOIST North America of Arizona, Inc*., United States District Court, Northern District of California, Case No. 20-CV-04404-VKD; *Sandra Lopez v. Motel 6 Operating, L.P.*, Ventura County Superior Court Case No. 56-2020-00542312-CU-OE-VTA; *Christina Mendoza v. Planned Parenthood Mar Monte, Inc.*, Santa Clara Superior Court, Case No. 18CV329544; *Javier Mendoza v. National Vision, Inc.,* United States District Court, Northern District of California, Case No. 19-CV-01485-SVK; *Valarie Murray v. Granite Wellness Centers*, Nevada County Superior Court, Case No. CU20-084680; *Nicolas Serafica v. HGST, Inc*., Santa Clara County Superior Court Case No. 21CV386574; and *Curtis White v. Cortech West Staffing, LLC,* San Joaquin County Superior Cort, Case No. STK-CV-UOE-2023-0000029.

43. In this motion, I request an attorney hourly rate of $595.00. Accordingly, the total lodestar for attorney hours will be approximately $25,585.00 ($595.00 x 43 attorney hours).

44. Having represented both employees and employers during my practice, I am familiar with the contingent fee market throughout Northern California, where I primarily practice law, and in other areas of the state in which my firm regularly litigates. Considering our experience and my knowledge of the market, I believe that the hourly rates charged by my firm, and previously approved by this Court, are fair and reasonable and less than those charged by my colleagues in other areas of California and the national market for prosecuting

representative actions.

45. I received my bachelor's degree from the University of California, Santa Barbara and my Juris Doctor degree from the University of Santa Clara School of Law. I have practiced law since 1987. The primary emphasis of my practice is employment litigation. I have represented both employers and employees. Over 20 years ago, my office commenced handling plaintiff representative action wage and hour cases. Since then, my office has handled hundreds of wage and hour cases to conclusion and has been counsel and/or co-counsel in over 100 class and representative actions. My firm currently has wage and hour cases in Alameda County Superior Court, Monterey County Superior Court, Nevada County Superior Court, Santa Clara Superior Court, San Benito Superior Court, San Bernardino County Superior Court, San Joaquin County Superior Court Santa Cruz Superior Court, Ventura County Superior Court, and the United States District Courts for the Eastern and Northern District of California.

46. My firm risked not only a great deal of time, but also significant expense to ensure the successful litigation of this action on behalf of all employees. In addition to the supporting documentation and legal authority presented in Plaintiff's moving papers, the attorneys' fees proposed are not just fair and reasonable; they are necessary in order to incentivize attorneys to take on the risk of time and expense associated with representative actions. Indeed, many times counsel expend enormous amounts of work and out of pocket costs in the interest of aggrieved employees and/or the State of California, only to end up without any recovery whatsoever. For example, my firm expended significant time and expenses in a wage/hour class and PAGA action, only to have the District Court grant summary judgment in its entirety against plaintiff. See *Guynn-Neupane*, 2021 WL 4481661 (N.D. Cal. Sep. 30, 2021). There are actual risks that Plaintiff requests this Court take into account when considering the requested attorneys' fees.

47. **<u>The Costs are Reasonable:</u>** Plaintiff's counsel has incurred $7,106.72 in litigation costs to date and anticipates an additional $74.25 for costs related to this motion and

the final accounting declaration, for a total of $7,180.97. Nonetheless, consistent with the prior cost determinations issued by the Monterey County Superior Court in other actions involving both individual and PAGA components, Plaintiff's counsel seeks reimbursement of litigation costs in the amount of $3,795.34, limited to the filing fee, complex case fee, and one-half of the mediation fee. Attached hereto as **Exhibit C** is a true and correct copy of my firm's total costs.

48. **The Settlement Administrator's Fees Should be Approved:** The Settlement Agreement allocates $2,500.00 for settlement administration costs. The Parties were able to secure a competitive bid from Phoenix Class Action Administration Solution not to exceed $2,500.00 to send notices and administer this settlement, which shall be paid out of the Gross Settlement Amount. Phoenix Settlement Administrators is a well-recognized class action settlement administrator, and submitted the lowest bid of the two potential settlement administrators solicited by Plaintiff's Counsel. The bid includes preparing the Notice in English and Spanish. The Parties believe that the administration fee is reasonable and should be approved, as it results in an anticipated cost of approximately $14.97 per employee, which is commensurate with similar settlements.

49. **Notice to the LWDA Has Been Provided:** Plaintiff uploaded the instant motion, the Settlement Agreement, and Proposed Order to the LWDA's website. Attached hereto as **Exhibit D** is a true and correct copy of the LWDA submission confirmation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and if called as a witness I could and would competently testify to each of the matters stated herein, and I state that these matters are based upon my own personal knowledge acquired through first-hand observation, except where stated otherwise. This declaration was executed by me on November 10, 2025, in Salinas, California.

/s/ B. James Fitzpatrick

B. James Fitzpatrick

EXHIBIT A

EXHIBIT B

PROOF OF SERVICE

I am employed in the County of Monterey, State of California. I am over the age of 18 and not a party to the within action; my business address is FITZPATRICK & SWANSTON, 555 S. Main Street, Salinas, California 93901.

On the date written below, I served the foregoing document(s), described as **DECLARATION OF B. JAMES FITZPATRICK IN SUPPORT OF PLAINTIFF'S MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**
on the interested parties in this action as indicated below and by the following means:

David S. Henshaw (SBN: 271226)
HENSHAW LAW OFFICE
155 E. Campbell Avenue, Suite 131
Campbell, CA 95008
Telephone: (408) 599-1350
david@henshawlaw.com

xx________________ **(BY ELECTRONIC SERVICE)** Pursuant to CCP § 1010.6 and Cal. Rules of Court, Rule 2.251, I caused the document(s) to be served, addressed to the person(s) at the e-mail address(es) listed above. I did not receive within a reasonable time after e-service, any electronic message or other indication that e-service was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 10, 2025, at Salinas, California.

/s/ Josie Favila
____
Josie Favila