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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF RIVERSIDE**

10 **(UNLIMITED JURISDICTION)**

11  
12 JOEL GUTIERREZ ALARCON, on behalf of  
13 himself, all others similarly situated, the general  
14 public, and as an “aggrieved employee” on  
15 behalf of other “aggrieved employees” under the  
Labor Code Private Attorneys General Act of  
2004,

16 *Plaintiff(s),*

17 vs.

18 FAIRWAY LANDSCAPE & IRRIGATION,  
19 INC., a California corporation; and DOES 1–50,  
inclusive,

20 *Defendant(s).*

Case No. CVRI2204068

**PLAINTIFFS JOEL GUTIERREZ  
ALARCON’S SUPPLEMENTAL  
BRIEFING IN SUPPORT OF MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Hearing Date: April 24, 2025

Hearing Time: 8:30 a.m.

Hearing Dept.: 1, The Honorable Harold  
W. Hopp

Action filed: September 22, 2022

Trial Date: Not Set

**Submitted Herewith Under Separate  
Cover:**

1. Memorandum of Points and Authorities;
2. Declaration(s) of David Spivak; and
3. [Proposed] Order



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1                   **SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES**

2                   Plaintiff JOEL GUTIERREZ ALARCON (“Plaintiff”) submits this supplemental briefing  
3 in support for his unopposed motion for preliminary approval of class action settlement. Pursuant  
4 to the Court’s Tentative Ruling dated April 03, 2025 (Supplemental Declaration of David G.  
5 Spivak (“Suppl. DS”), Ex. 18), the Parties amended the Class Action and PAGA  
6 Settlement Agreement and Class Notice dated January 15, 2025 (Suppl. DS, Ex. 19) to address  
7 the Court’s concerns. The Parties seek approval of this new settlement agreement, entitled  
8 First Amended Class Action and PAGA Settlement Agreement dated April 21, 2025  
9 (“Settlement”). Suppl. DS, Exs. 20 (clean) and 21 (redline). Each of the Court’s comments in  
10 the Tentative Ruling are recited below in bold, followed by a discussion of the Plaintiffs’  
11 response to the comment/question.

12                   **1. Released class claims are not limited to those alleged in the operative  
13 complaint.**

14                   The Parties have revised Section 6.2 of the Settlement to state,

15                   Plaintiff and all Participating Class Members, on behalf of themselves and their  
16 respective former and present representatives, agents, attorneys, heirs,  
17 administrators, successors, and assigns, release and discharge Released Parties,  
18 for the duration of the Class Period, claims based on the factual allegations and  
19 statutes asserted in the Action and Operative Complaint.

20                   The Parties have also revised the Notice of Class Action Settlement to reflect this language at  
21 Section 3.I.

22                   **2. PAGA release is not limited to the named plaintiff and the State. (Non-  
23 parties, such as aggrieved employees, may be bound by the judgment as described in Arias  
24 v. Superior Court (2009) 46 Cal.4th 969.)**

25                   The Parties have revised Section 6.3 of the Settlement to state,

26                   Plaintiff releases and forever discharges, for the duration of the Class Period, all  
27 claims for civil penalties that could have been sought by the Labor Commissioner  
28 under the PAGA based on the factual allegations and statutes asserted or that  
could have been asserted in the Action, the Operative Complaint and Plaintiffs  
PAGA Notice. The Release of PAGA Claims also includes a release from the state



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1 of California ( to the extent Plaintiff is permitted to provide such a release for the  
2 state of California for the Class period).

3 The Parties have also revised the Notice of Class Action Settlement to reflect this language at  
4 Section 3.J.

5 **3. There does not appear to be a declaration from the defendant as to the likely**  
6 **age, education and experience of class members and their ability to read and comprehend**  
7 **English.**

8 Defendant has provided the declaration of Alicia Martinez that states the likely age,  
9 education and experience of class members and their ability to read and comprehend English.  
10 Suppl. DS, Exhibit 24. Consistent with this declaration, the First Amended Settlement requires  
11 the Notice Packet to be mailed to Class Members in Spanish and English.

12 **4. Need to revise objection and exclusion forms to include name and address of**  
13 **administrator and date by which the forms must be mailed to the administrator.**  
14 **Information is at end of notice forms, after objection form.**

15 The Parties have revised the objection and exclusion forms to include name and address  
16 of administrator and date by which the forms must be mailed to the administrator on the first  
17 page of these documents. The objection form previously contained this information on the final  
18 page.

19 **5. Does the notice specify the full title of the document to which the settlement**  
20 **agreement is attached and the date of filing (Declaration of David Spivak, filed March 11,**  
21 **2025)? Please include the street address of the courthouse (4050 Main Street, Riverside,**  
22 **CA) along with the Court's web address (notice, section 9).**

23 At Section 9 of the revised Notice of Class Action Settlement, it states as follows:

24 The Agreement sets forth everything Defendant and Plaintiff have promised to do  
25 under the proposed Settlement. The easiest way to read the Agreement, the  
26 Judgment or any other Settlement documents is to go to the Administrator's  
27 website at [www.phoenixclassaction.com](http://www.phoenixclassaction.com). On the Administrator's website,  
28 the Settlement is entitled "First Amended Settlement" dated April 21, 2025. You  
can also telephone or send an email to Class Counsel or the Administrator using the



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1 contact information listed below, or consult the Superior Court website by going  
2 to (<https://epublic-access.riverside.courts.ca.gov/public-portal/?q=node/379>) and  
3 entering the Case Number for the Action, Case No. CVRI2204068. In the  
4 Court's online docket, the First Amended Settlement is attached as  
5 Exhibit 20 to Declaration of David Spivak filed on April 21, 2025. You  
6 can also make an appointment to personally review court documents in the  
7 Clerk's Office at the Riverside Historic Courthouse, 4050 Main Street,  
8 Riverside, CA 92501 by calling (951) 777-3147.

9  
10 Respectfully submitted,

11 THE SPIVAK LAW FIRM

12 Dated: April 21, 2025

13 By:



14 DAVID G. SPIVAK, Attorneys for  
15 Plaintiff(s), JOEL GUTIERREZ  
16 ALARCON, all others similarly situated



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