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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

ERICK AVALOS, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

Plaintiff,

vs.

LANDCARE USA L.L.C., a Delaware limited liability company; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 25CU040088C

Honorable Wendy M. Behan
Department C-66

CLASS ACTION

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

Date:	August 28, 2026
Time:	10:15 a.m.
Department:	C-66
Complaint Filed:	July 30, 2025
FAC Filed:	October 2, 2025
SAC Filed:	December 5, 2025
TAC Filed:	July 24, 2026
Trial Date:	None Set

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TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on August 28, 2026, at 10:15 a.m. or as soon thereafter as the matter may be heard before the Honorable Wendy M. Behan in Department C-66 of the Superior Court of California for the County of San Diego, located at 330 West Broadway, San Diego, CA 92101, Plaintiff Erick Avalos ("Plaintiff" or "Class Representative") will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation Re: Class Action and Representative Action Settlement and Amendment No. 1 to Joint Stipulation for Class Action and PAGA Settlement (together, "Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 1**" and **"EXHIBIT 2,"** respectively, to the Declaration of Scarlet Tunney in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement;
- Certifying the proposed Class for settlement purposes;
- Appointing Plaintiff Erick Avalos as Class Representative;
- Appointing Arby Aiwazian, Joanna Ghosh, and Scarlet Tunney of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Proposed Class and Representative Action Settlement ("Class Notice"), attached as "**EXHIBIT A**" to the [Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement, and directing the mailing thereof in accordance with the Settlement Agreement;
- Approving Phoenix Settlement Administrators as the Settlement Administrator; and
- Scheduling a hearing to consider final approval of the Settlement.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which require approval by the Court of the settlement of a putative class action, and Rule 3.1113(e), which allows the Court to preliminarily certify a class for settlement purposes, and permits the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declaration of Proposed Class Counsel (Scarlet Tunney), the proposed Settlement Administrator, and Proposed Class Representative (Erick Avalos) in support thereof, as well as the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: August 6, 2026

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By: Scarlet Tunney
Brian J. St John
Scarlet Tunney
Attorneys for Plaintiff Erick Avalos

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Erick Avalos ("Plaintiff," "Named Plaintiff," or "Class Representative") seeks preliminary approval of the Joint Stipulation Re: Class Action and Representative Action Settlement and Amendment No. 1 to Joint Stipulation Re: Class Action and Representative Action Settlement (together, "Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant LandCare USA L.L.C., ("Defendant" or "LandCare") on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the "Parties") have agreed to settle the lawsuit for a Gross Settlement Amount of $295,000.00.[1]

Plaintiff also seeks to provisionally certify the following Class for settlement purposes, which Defendant does not oppose:

> All current and former non-exempt, hourly-paid employees of LandCare who received wages for hours worked in California at any time during the Class Period ("Settlement Class" or "Participating Class Members").[2]

Settlement Class Members who do not submit a timely and valid Request for Exclusion from the Class Settlement ("Participating Class Members") will receive a *pro rata* share of the Net Settlement Amount ("Individual Settlement Share"). The net payment of each Participating Class Member's Individual Settlement Share ("Individual Settlement Payment") will be distributed to Participating Class Members on a *pro rata* basis based on the Participating Settlement Class Members' respective number of Qualifying Workweeks during the Class Period ("Workweeks").[3]

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[1] Settlement Agreement, attached as "**EXHIBIT 1**" to Declaration of Scarlet Tunney ("Tunney Decl."), § 1.L. LandCare represents that the estimated 1,123 Participating Class Members worked approximately 55,000 Qualifying Workweeks during the Class Period. In the event that it is determined that the number of Qualifying Workweeks worked by Settlement Class Members during the Class Period increases by more than 10%, such that the Qualifying Workweeks are 60,500 or greater, then the Gross Settlement Amount shall be increased by an amount equal to the percentage increase in Qualifying Workweeks over the 60,500 threshold. Thus, for example, if the number of Qualifying Workweeks worked during the Class Period is increased by 13% to 62,150, the Gross Settlement Amount would be increased by 3%, or $8,850.00 ($295,000 x 0.03). *See id.*, § 17.

[2] Settlement Agreement, § 1.GG. "Class Period means the period from December 15, 2023 through December 27, 2025, subject to the Escalator Clause. *See id.*, § 1.E.

[3] Settlement Agreement, §§ 1.O, 1.N, & 1.Z.

The Settlement, upon final approval by the Court and funding of the Gross Settlement Amount, will operate to resolve the Class Released Claims of Plaintiff and Participating Class Members and the PAGA Released Claims of the State of California.[4]

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant LandCare is a landscaping company with more than 4,000 employees. Defendant LandCare provides landscaping services to its customers. Plaintiff is a former employee of Defendant.

On July 29, 2025, Plaintiff provided written notice by electronic upload to the LWDA and written notice by certified mail to Defendants of her intent to pursue civil penalties under specific provisions of the California Labor Code that were alleged to be violated ("PAGA Notice"). On January 7, 2026, Plaintiff filed an amended PAGA Notice with the LWDA ("the Amended PAGA Notice") (together, the "PAGA Notices").[5]

On July 30, 2025, Plaintiff filed the Class Action Complaint for Damages in the Superior Court for the County of San Diego, thereby commencing the above-captioned lawsuit ("Class Action").[6]

On September 12, 2025, Plaintiff filed a separate Collective Action Complaint in the San Diego Superior Court, Case No. 25CU048876C ("FLSA Action").[7]

On December 5, 2025, Defendant removed the FLSA Action to the United States District Court for the Southern District of California, S.D. Cal. Case No. 3:25-cv-03440-BTM- VET (the "FLSA Action").[8]

On October 2, 2025, Plaintiff filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq*. ("FAC") in the Action, which, *inter* alia, added a cause of action for PAGA penalties and added

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[4] Settlement Agreement, at § 2.L. See *id*. at § 7.a. for the full scope of the "Class Released Claims" *id*. at § 7.b. for the full scope of the "PAGA Released Claims," and *id*. at § 1.AA. for the definition of the "Released Parties."
[5] *Id*., §2.A.
[6] *Id*., §2.B.
[7] *Id*., §2.C.
[8] Ibid.

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Michael Bogan as an individual defendant.[9]

On November 11, 2025 the Parties met and conferred regarding the impact of a prior class and PAGA settlement by LandCare on the time period and claims at issue in this Action, and agreed to stipulate to filing of a Second Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq*. ("SAC") in the Action, which amends the covered period to commence after the release date in Defendant LandCare's prior settlement.[10]

On November 18, 2025, the Parties filed a joint stipulation for leave to file the Second Amended Complaint, which the Court granted on November 25, 2025.[11]

On December 5, 2025, Plaintiff filed the SAC in the Action.[12]

On December 18, 2025, the Parties executed Memorandum of Understanding ("MOU") to resolve the above-captioned Action, the FLSA Action, and all of the violations discovered during the course of litigation, including as alleged in the PAGA Notice, the Amended PAGA Notice and the Third Amended Complaint to be filed in the Action pursuant to the Settlement.[13]

On December 19, 2025, the Parties filed a joint stipulation to dismiss the FLSA Action without prejudice.[14] On December 22, 2025, the federal district court entered an order dismissing the FLSA Action, without prejudice.[15]

On April 2, 2026, Plaintiff filed a Request for Dismissal seeking to dismiss Defendant Michael Bogan without prejudice. On April 22, 2026, the Court entered an order dismissing Defendant Michael Bogan without prejudice.

As set forth in the Settlement Agreement, the Parties have agreed to Plaintiff's filing of a third amended complaint to, *inter alia*, remove references to dismissed Defendant Michael Bogan and adding claims for violations of California Labor Codes § 1174.5, § 227.3, and § 246.

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[9] Settlement Agreement, §2.D.
[10] *Id*., §2.E.
[11] Ibid.
[12] Ibid.
[13] *Id*., §2.H.
[14] *Id*., §2.I.
[15] Ibid.

On July 24, 2026, Plaintiff filed the Third Amended Complaint.

Plaintiff's core allegations are that Defendant has violated California wage and hour law, including but not limited to laws set forth in the California Labor Code, by engaging in a uniform practice and procedure, with respect to Plaintiff, Settlement Class Members, and Aggrieved Employees of, *inter alia*, failing to pay all overtime and minimum wages, at all or at the correct rate of pay, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, failing to provide vested vacation pay, failure to pay sick leave, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq*., and conduct giving rise to civil penalties recoverable under the Private Attorneys General Act of 2004 (California Labor Code sections 2698, et seq.). Plaintiff contends that he, the Settlement Class Members, and Aggrieved Employees are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees and costs.[16]

The Parties have actively litigated the Action since it commenced on July 30, 2025. After direct negotiations with Defense Counsel, the Parties reached the Settlement described herein to resolve the Action in its entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount of $295,000.00 to resolve the Action.[17] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed 35% of the Gross Settlement Amount (i.e., $103,250.00 if the Gross Settlement Amount remains $295,000.00) and reimbursement of actual litigation costs and expenses in an amount not to exceed $10,000.00 ("Attorneys' Fees and Costs") to Class Counsel; (2) Settlement Administration Costs, which are currently estimated not

[16] Settlement Agreement, §7.a.
[17] *Id*., §1.L.

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to exceed $13,000.00 to the Settlement Administrator ("Settlement Administration Costs"); (3) payment in the amount of up to $5,000.00 to Plaintiff ("Service Award", and PAGA Penalties of $50,000.00 ("PAGA Penalties"), of which of which 65% (i.e., $32,500.00) will be distributed to the Labor Workforce and Development Agency ("LWDA") and 35% (i.e., $17,500.00) will be paid to all current and former non-exempt, hourly-paid employees of LandCare who received wages for hours worked in California at any time during the PAGA Period ("Aggrieved Employees").[18] The Parties have agreed to retain Phoenix Settlement Administrators, ("Phoenix" or "Settlement Administrator") to handle the notice and settlement administration process.[19]

The Parties have agreed that the Settlement Administrator will determine each Participating Class Member's share of the available Net Settlement Amount ("Individual Settlement Share"), in accordance with the Settlement Agreement on a *pro rata* per basis based on the Participating Class Members' respective Number of Qualifying Workweeks, which will be adjusted after Final Approval to reflect the total Workweeks worked by the Participating Class Members. The Parties have agreed that the Settlement Administrator will determine each Aggrieved Employee's share of the 35% share of the PAGA Penalties ("Individual PAGA Payment"), in accordance with the Settlement Agreement on a *pro rata* basis, based on Aggrieved Employees' respective number of Qualifying Pay Periods during the PAGA Period.[20]

The Parties agree, for purposes of this Settlement, that Individual Settlement Shares will be allocated 20% to wages subject to withholdings and 80% to penalties and interest.[21] The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share, and issue checks to Participating Class Members for their Individual Settlement Payments. Each Individual PAGA Payment will

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[18] Settlement Agreement, §§ 1.Q, 12, 1.EE, and 1.S; See Amendment No.1, ¶ A. "PAGA Period" means the period from June 22, 2024 through December 27, 2025. *See id*., § 1.T.
[19] *Id*., § 8.A.
[20] *Id*., §§ 1.C and 1.S.
[21] *Id*., § 14.a.

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be allocated as 100% penalties and will not be subjected to withholdings.[22] Defendant will provide the funds for any employer-side taxes related to the Individual Settlement Shares.[23]

Individual Settlement Payment and Individual PAGA Payment checks will be negotiable for 180 calendar days from the date of their issuance, and thereafter, shall be canceled.[24] Thereafter, funds from uncashed Individual Settlement Payment and/or Individual PAGA Payment checks shall be transmitted to the California State Controller's Unclaimed Property Division in the name of each Settlement Class Member and/or Aggrieved Employee to whom the checks were issued.[25]

Any Settlement Class Member may request to be excluded from the Class Settlement by mailing a Request for Exclusion postmarked on or before the date that is 45 calendar days from the date of the initial mailing of the Class Notice by the Settlement Administrator ("Response Deadline").[26] Aggrieved Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.[27]

Only Settlement Class Members who have not submitted a Request for Exclusion (i.e., Participating Class Member) may object to the Class Settlement by submitting a Notice of Objection, to the Settlement Administrator prior to the Response Deadline.[28]

In order to dispute the number of Workweeks and/or PAGA Pay Periods attributable to an individual Participating Class Member and/or Aggrieved Employee, that Settlement Class Member and/or Aggrieved Employee must submit a written letter to the Settlement Administrator, and must include the following in writing: (1) the Settlement Class Member's name; (2) the Settlement Class Member's Address; (3) the Settlement Class Member's telephone number; (4) the last four digits of the Settlement Class Member's Social Security Number; (5) the Settlement Class Member's signature; and (6) a statement that the Settlement Class Member

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[22] Settlement Agreement, § 14.a.
[23] *Id.*, § 14.c.
[24] *Id.*, § 11.A.
[25] Ibid.
[26] *Id.*, § 1.BB.
[27] *Id.*, § 9.C.
[28] Ibid.

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seeks to be excluded from the Settlement Class using the same or any other language standing for the proposition the Settlement Class Member seeks to be excluded from the Settlement Class: "Please exclude me from the Settlement Class in the *Avalos v. LandCare USA, LLC* matter. I understand that by requesting exclusion, I will not participate in the class settlement and will not receive any money from the class settlement."[29]

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). Courts review class action settlements in a two-step process: (1) an earlier conditional review by the court; and (2) a later detailed review after the period during which notice is distributed to class members for their comments or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th Ed. 2002). Preliminary approval of a settlement does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage. Cal. R. Ct. 3.769(g).

In considering a potential class settlement, a court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required for the trial court to grant provisional class certification and preliminary approval; the court may grant such relief upon an informal application by the settling parties and may conduct any necessary hearing in court or in chambers, at the court's discretion. *Newberg*, § 11.25.

V. THE COURT SHOULD PRELIMINARY APPROVE THE SETTLEMENT

The trial court has broad discretion to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk,* 48 Cal.App.4th at 1800. To make this fairness

[29] Settlement Agreement, §9.C.

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determination, courts must consider several relevant 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 view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Dunk*, 48 Cal.App.4th at 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. Furthermore, courts give "proper deference to the private consensual decision of the parties." *Hanlon*, 150 F.3d at 1027 (citation omitted).

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. "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.*; *Dunk*, 48 Cal.App.4th at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

A. <u>The Settlement Resulted from Arm's-Length Negotiations Based Upon Extensive Investigation and Discovery.</u>

The Parties have actively litigated the Action since it commenced on July 30, 2025. Both sides investigated the veracity, strength, and scope of the claims throughout the case, and Class Counsel was actively preparing the matter for class certification and trial.[30]

Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of documents and data from Plaintiff, Defendant, and other sources. The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiffs' employment records, a detailed sampling of Plaintiff's and other Settlement

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[30] Tunney Decl., ¶ 11.

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Class Members' time data and pay records, Defendant's Employee Handbook Acknowledgement Form, internal memoranda, new hire orientation checklists, company policy acknowledgements (including but not limited to Benefits Offer Acknowledgment Form, Commitment to Employee Safety Form), forms, procedures, and policies (including but not limited to Uniform & Policy Order Form, New Hire Safety Orientation Checklist, Personnel Action Form, and Vehicle GPS and Fuel Card Policy).[31] Class Counsel had the opportunity to interview Plaintiff to gather facts and to identify potential witnesses.[32] In addition, Class Counsel has extensive experience in California wage-and-hour class actions.[33]

B. The Settlement Is Fair, Reasonable, and Adequate.

The Settlement represents a fair, adequate, and reasonable resolution of the matter.[34] The Settlement was calculated using the information and data uncovered during litigation, case investigation, and the formal and informal exchange of information.[35] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue.[36] Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.[37]

Assuming that the Attorneys' Fees and Costs, Service Award, PAGA Penalties, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be $117,750.00.[38] Additionally, 35% of the PAGA Penalties (i.e., Aggrieved Employee Amount), which is $17,500.00 out of $50,000.00, will be distributed to the Aggrieved Employees. The entire Net Settlement Amount will be fully paid out to the Participating Class Member, in accordance with the Settlement Agreement.

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[31] Tunney Decl., ¶ 12.
[32] Ibid.
[33] *Id.*, ¶ 7.
[34] *Id.*, ¶ 11.
[35] Ibid.
[36] *Id.*, ¶ 21.
[37] *Id.*, ¶¶ 11, 13 & 21.
[38] *Id.*, ¶ 14.

The amount of each Participating Class Member's Individual Settlement Share and each Aggrieved Employee's Individual PAGA Payment will be calculated based on their Workweeks and/or PAGA Pay Periods during the Class Period and PAGA Period, respectively.[39] "An allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." In *re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. Here, the allocation is reasonably related to the number of Workweeks and/or PAGA Pay Periods employees were actually paid by Defendant during the relevant period and should be approved.

In light of the foregoing considerations, Class Counsel believe that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Settlement Class Members, Aggrieved Employees, and the State of California.[40] Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appear to be competent, and have experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. <u>The Settlement Is of Significant Value.</u>

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted formal and informal discovery and exchanged documents, data, and information prior to settlement negotiations.[41] The information that Class Counsel obtained from Plaintiff, Defendant, and other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a evaluation of Defendant's defenses thereto.[42] Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.[43]

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[39] Tunney Decl., ¶ 15.
[40] *Id.*, ¶¶ 11, 13 & 21.
[41] *Id.*, ¶ 18.
[42] *Id.*, ¶ 11.
[43] Ibid.

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VI. CERTIFICATION OF THE CLASS IS APPROPRIATE

The requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.[44] California Code of Civil Procedure Section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the Plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

A. The Class Is Ascertainable and Sufficiently Numerous.

"Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*." *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. "A class is ascertainable if it identifies a group of unnamed Plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description." *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed Class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435; *see also Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). The Class here is estimated to be approximately 1,123 individuals, which is sufficiently numerous.[45] Further, all Settlement Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant's employment records regarding hourly-paid, non-exempt employees of LandCare who received wages for hours worked in California at any time during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

B. The Class Shares a Well-Defined Community of Interest.

The community of interest requirement "embodies three factors: (1) predominant common questions of law or fact; (2) Class Representative with claims or defenses typical of the

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[44] Settlement Agreement, § 5.

[45] Tunney Decl., ¶ 9.

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class; and (3) Class Representative who can adequately represent the class." *Sav-On*, *supra*, 34 Cal.4th at 326. "[T]he community of interest requirement for certification *does not mandate that class members have uniform or identical claims*." *Capitol People First v. Dep't of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts focus on the Defendant's internal policies and "pattern and practice . . . in order to assess whether that common behavior toward similarly situated Plaintiff renders class certification appropriate." *Id.* (citing *Sav-On*, 34 Cal.4th at 333).

Here, common issues of law and fact predominate as to each of the claims alleged and asserted in the Action. Based on the documents and information obtained through formal and informal discovery and exchange of information in the case, Plaintiff contends that Settlement Class Members performed similar job duties and were subject to uniform operations and employment policies, practices, and procedures during the Class Period, including payroll and recordkeeping practices.[46] As a result, Plaintiff claims that all of the Settlement Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue. Plaintiff maintains that the outcome of this litigation would be determined by Defendant alleged uniform operations and employment policies and procedures that applied across its hourly-paid, non-exempt employees who received wages for hours worked in California at any time during the Class Period.

As a member of the Class who were subject to these same policies, practices, and procedures, Plaintiff's claims are typical of the Class. Moreover, Plaintiff has no interests adverse to the Class. Plaintiff has taken steps to initiate and maintain this action and to ensure that it comes to a fair and reasonable resolution.[47] Importantly, Plaintiff has retained a law firm well-versed in wage and hour class actions, which has at all times represented the best interests of Plaintiff and the Class.[48]

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[46] Tunney Decl., ¶ 16.
[47] Declaration of Erick Avalos in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Avalos Decl."), ¶ 6.
[48] Tunney Decl., ¶¶ 2-6.

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Accordingly, the proposed Class shares a community of interest, and the Court should certify the Class for settlement purposes only.

VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS' FEES AND COSTS

Class Counsel has litigated the matter since prior to its commencement and was actively preparing the matter for class certification and trial.[49] The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel reviewed a large volume of pages of documents and data[50] and also interviewed and obtained information from Plaintiff, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings and the production of documents and data prior to settlement negotiation.[51] Counsel for the Parties also undertook extensive settlement discussions, which included participating in direct settlement negotiations.[52]

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[53]

The Settlement establishes a Gross Settlement Amount of $295,000.00, and provides for Class Counsel to apply to the Court consisting of attorneys' fees in an amount not to exceed 35% of the Gross Settlement Amount (i.e., $103,250.00 if the Gross Settlement Amount remains $295,000.00) and reimbursement of actual costs and expenses in an amount up to $5,000.00.[54] The attorneys' fees provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Settlement Class Members, Aggrieved

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[49] Tunney Decl., ¶ 11.
[50] *Id.*, ¶ 18.
[51] Ibid.
[52] *Id.*, ¶ 11.
[53] Tunney Decl., ¶ 7; Exh. 1.
[54] Settlement Agreement, §§ 1.L, 12.

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Employees, and the State of California, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Settlement Class Members that an award of the Attorneys' Fees and Costs will be sought, and the amount allocated toward the Attorneys' Fees and Costs by the Settlement.[55]

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Id.* at 50.

The California Supreme Court has confirmed the propriety of calculating and awarding attorneys' fees as a percentage of a settlement that has, by litigation, been preserved or recovered for the benefit of others. *Laffitte*, *supra*, 1 Cal.5th 480 at 486 & 506. The Court has taken the position that while "[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee[,]" and "[t]he percentage of fund method survives in California." *Id*. (internal quotation marks omitted).

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg,* § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the $7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*

[55] Settlement Agreement, Exh. A.

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(S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys' fees). California courts routinely approve class action attorneys' fee awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[56]

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff's Motion for Final Approval of the Settlement and application for the Attorneys' Fees and Costs at the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys' fees provided for by the Settlement are well within the range of reasonableness for preliminary approval.

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

California statutory authority and case law vests the Court with broad discretion in fashioning appropriate class notice. See Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74. A class notice is adequate if it "present[s] a fair recital of the subject matter and proposed terms" of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

"Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice describes the Settlement, the deadlines and procedures to submit an objection to the Class Settlement, submit a Request for Exclusion from the Class Settlement, and/or dispute regarding Workweeks and/or PAGA Pay Periods, and the date and time set for the Final Approval Hearing.[57] The proposed Class Notice summarizes the

[56] Tunney Decl., ¶ 19.
[57] Settlement Agreement, Exh. A.

proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[58] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[59] The proposed Class Notice also apprises the Settlement Class Members and Aggrieved Employees of, *inter alia*, how their Individual Settlement Share and if applicable, their Individual PAGA Payment is calculated and the number of Workweeks and/or PAGA Pay Periods credited to them.[60] The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39.

Thus, the proposed Class Notice satisfies all due process requirements and complies with the standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960. Accordingly, the Court should approve the proposed Class Notice.

IX. APPOINTMENT OF THE SETTLEMENT ADMINISTRATOR

The Parties have selected Phoenix Settlement Administrators as the Settlement Administrator. Within 7 calendar days of receipt of the Class List, the Settlement Administrator will perform an NCOA check and will mail the Class Notice to each Settlement Class Member and Aggrieved Employee.[61] The Settlement Administrator will skip-trace returned Class Notices and re-mail the Class Notice to the new addresses promptly.[62] In the case of a re-mailed Class Notice, the Response Deadline will be the later of 60 calendar days after initial mailing or 15 calendar days from re-mailing.[63] The Administrator will receive and process Requests for Exclusion, Notices of Objection, and any challenges to Workweeks and/or PAGA Pay Periods.[64] In addition, the Settlement Administrator will be responsible for printing, distributing, and tracking Class Notices and other documents for the Settlement; calculating and distributing payments due under the Settlement; issuing of 1099 and W-2 IRS Forms and all required tax

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[58] Settlement Agreement, Exh. A.
[59] Ibid.
[60] Ibid.
[61] *Id.*, § 9.A.1.
[62] *Id.*, § 9.A.3.
[63] *Id.*, § 1.BB.
[64] *Id.*, §§ 8.A, 8.B, & 8.D.

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reporting, filings, withholdings, and remittances; providing necessary reports and declarations; and other duties and responsibilities to process the Settlement and as requested by the Parties.[65] The Settlement Administration Costs are currently estimated to be $13,000.00 and will be paid out of the Gross Settlement Amount, subject to approval by the Court.[66] Accordingly, Plaintiff respectfully requests that the Court appoint Phoenix Settlement Administrators as the Settlement Administrator and direct the mailing of the Class Notice to the Settlement Class Members and Aggrieved Employees in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

XI. CLASS REPRESENTATIVE SERVICE AWARD

Plaintiff respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Service Award in an amount up to $5,000.00.[67] It is within the Court's discretion to award payment to a Class Representative for his efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299. The factors that courts may consider in determining whether to make an Service Award include: (1) the risk to the Class Representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the Class Representative; (3) the amount of time and effort spent by the Class Representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the Class Representative as a result of the litigation. *Id*.

The Service Award is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.[68] Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims.[69] Accordingly, it is appropriate and just for

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[65] Settlement Agreement, § 14.
[66] Settlement Agreement, § 1.EE; see Amendment No.1, ¶ A.
[67] *Id.*, § 1.DD.
[68] Tunney Decl., ¶ 12; Avalos Decl., ¶ 3-6.
[69] Ibid.

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Plaintiff to receive $5,000.00 for his services on behalf of the Class, Aggrieved Employees, and the State of California, in addition to his Individual Settlement Payment.

XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant Preliminary Approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers *for* Justice, PC as Class Counsel; appoint Plaintiff Erick Avalos as Class Representative; appoint Phoenix Settlement Administrator as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Service Award, PAGA Penalties, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; and to schedule a Final Approval Hearing to take place in approximately 6 months.

Dated: August 6, 2026

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