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individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

SALVADOR ESCOBAR CABRERA and
JUAN ESCOBAR CABRERA, individually
and on behalf of all other similarly situated
employees,

Plaintiffs,

vs.

MIKE MCCALL LANDSCAPE, INC., a
California Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 23CV005083

*Assigned for All Purposes to Hon. Lauri A. Damrell
Department 22*

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT**

Reservation No. A-05083-001

Date: November 1, 2024

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: July 20, 2023

FAC Filed: November 20, 2023

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on November 1, 2024, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 22 of the above-entitled Court, Plaintiffs Salvador Escobar Cabrera
4 and Juan Escobar Cabrera, individually and on behalf of all other similarly situated individuals, will, and
5 hereby do, move for entry of an Order for the following:

- 6 1. Preliminarily certifying the proposed class herein for purposes of settlement;
- 7 2. Preliminarily appointing Plaintiffs Salvador Escobar Cabrera and Juan Escobar Cabrera as
8 class representatives for purposes of settlement;
- 9 3. Preliminarily appointing Shimoda & Rodriguez Law, PC, as Class Counsel for purposes of
10 settlement;
- 11 4. Preliminarily approving the proposed class action and Private Attorney's General Act
12 settlement, in the amount of \$685,000, which is incorporated herein by reference;
- 13 5. Preliminarily approving the appointment of ILYM Group, Inc., as the Settlement
14 Administrator and for payment to ILYM Group, Inc., for administering said class action
15 settlement in an amount not to exceed \$20,000;
- 16 6. Preliminarily approving the settlement of claims under the Private Attorneys General Act for
17 the total amount of \$40,000, 75% of which will be paid to the Labor and Workforce
18 Development Agency and 25% of which will be paid to Aggrieved Employees;
- 19 7. Approving as to form and content the Notice of Settlement, which provides Class Members
20 information regarding the settlement, their ability to opt out of, or object to, the class action
21 settlement and which provides instruction on how to dispute an individual's settlement
22 allocation under the proposed settlement agreement;
- 23 8. Approving the proposed procedures to notify the class and determining that the proposed
24 notification procedures and process comply with Class Members' due process rights and
25 directing the Notice of Settlement to be sent by first class mail to Class Members;
- 26 9. Directing Defendant to report employment information, including social security numbers, to
27 the Settlement Administrator to administer the settlement proceeds;
- 28

1 10. Scheduling a fairness hearing on the question of whether the proposed settlement should be
2 finally approved as fair, reasonable, and adequate;

3 11. Directing that any amount from settlement checks that were not cashed by the check cashing
4 deadline be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers
5 Rights under the doctrine of *cy pres*;

6 12. Preliminarily and conditionally approving and adopting the Proposed Order and its
7 implementation schedule, which is filed herewith and incorporated by reference.

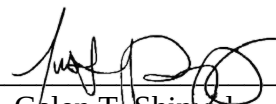
8 This motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section
9 2699(l), and California Rules of Court 3.769 and 3.764, on the grounds that the proposed class action
10 and Private Attorneys General Act settlement is fair, reasonable, and adequate as to all Class Members
11 and should be approved by the Court. This motion will be based on the notice of motion, memorandum
12 of points and authorities, the Declaration of Justin P. Rodriguez, the Declaration of Salvador Escobar
13 Cabrera, the Declaration of Juan Escobar Cabrera, exhibits, the record and files of this case, and any
14 further oral or documentary evidence introduced at the hearing of this motion.

15
16 **Pursuant to Local Rule 1.06(A), the court will make a tentative ruling on the merits of this matter**
17 **by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the**
18 **department may be downloaded off the court's website. If the party does not have online access,**
19 **they may call the dedicated phone number for the department as referenced in the local telephone**
20 **directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and**
21 **receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the**
22 **court day before the hearing, no hearing will be held.**

23 Dated: October 8, 2024

Shimoda & Rodriguez Law, PC

24 By: _____

25 
26 Galen T. Shimoda
27 Justin P. Rodriguez
28 Renald Konini
Attorneys for Plaintiffs

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Department 22*

CLASS ACTION

**MEMORANDUM OF POINTS & AUTHORITIES
IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No. A-05083-001

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25	<i>Moore v. Fitness Int'l, LLC</i> , 2014 U.S. Dist. LEXIS 8358 (S.D. Cal. 2014)	4
26	<i>Officers for Justice v. Civil Serv. Comm'n</i> , 688 F.2d 615 (9th Cir. 1982)	10
27	<i>Patel v. Nike Retail Services, Inc.</i> , 2019 WL 2029061 (N.D. Cal. 2019).....	15
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I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT

Plaintiffs Salvador Escobar Cabrera and Juan Escobar Cabrera (“Plaintiffs”) seek preliminary approval of a non-reversionary wage and hour class action and Private Attorneys General Act (“PAGA”) settlement in the gross amount of \$685,000. *See generally* Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and Release [“Agreement”]). Plaintiffs brought this class action individually and on behalf of similarly situated employees who worked for Defendant Mike McCall Landscape, Inc., (“Defendant”) (Plaintiffs and Defendant sometimes collectively referred to as the “Parties”). *See generally* Exhibit B (Plaintiffs’ Operative Complaint). There are approximately 869 Class Members.

Plaintiffs have alleged that Defendant failed to pay overtime wages, failed to pay minimum wages, committed meal and rest period violations, failed to provide accurate wage statements, failed to pay all final wages, failed to reimburse business expenses, failed to pay prevailing wages, and engaged in unfair competition. *See generally* Exhibit B; *see also* Declaration of Justin P. Rodriguez (“Decl. Rodriguez”), ¶¶ 3, 10. Plaintiffs have also alleged Defendant is liable for civil penalties under the PAGA based on these violations. *See id.*; Exhibit C (Plaintiffs’ Ltr. to the Labor and Workforce Development Agency [“LWDA”] Regarding PAGA Claims). Defendant has denied all of Plaintiffs’ allegations in their entirety and any liability or wrongdoing of any kind. *See* Decl. Rodriguez, ¶ 6. Defendant has also denied that this case is appropriate for class certification other than for purposes of settlement. *See id.* However, subject to Court approval, the Parties have been able to compromise and settle all asserted claims as a result of extensive investigations, document and data exchanges, and extended negotiations. *See* Exhibit A. Plaintiffs and Plaintiffs’ counsel believe the proposed Agreement is fair, reasonable, and adequate based on the investigations, discovery, employee data exchanges, negotiations, and a detailed knowledge of the issues in this case. *See* Decl. Rodriguez, ¶¶ 7-11; Declaration of Salvador Escobar Cabrera (“Decl. S. Escobar Cabrera”) ¶ 10; Declaration of Juan Escobar Cabrera (“Decl. J. Escobar Cabrera”) ¶ 10.

It is well within the discretion of this Court to grant preliminary approval of the Agreement as it satisfied all applicable criteria under California law. Accordingly, Plaintiffs request that the Court: (1) certify the proposed settlement class on a preliminary and conditional basis; (2) grant preliminary and

conditional approval of the proposed Agreement (Exhibit A); (3) approve the form and content of the Notice of Settlement (Exhibit F) and the method for providing notice to Class Members as set forth in the Agreement; and (4) adopt the implementation schedule contained in the proposed order.

II. PROCEDURAL AND LITIGATION HISTORY

Plaintiffs filed a class action complaint on approximately July 20, 2023, in Sacramento County Superior Court against Defendant. Plaintiffs exhausted administrative remedies under the PAGA by providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code § 2699.3(a), (c); Decl. Rodriguez, ¶ 4. Then, Plaintiffs filed a First Amended Class Action Complaint on approximately November 20, 2023, to include a PAGA claim. *See id.*; Exhibit B. There is no date set for a motion for certification or trial in this matter. *See* Decl. Rodriguez, ¶ 5.

III. INVESTIGATION AND DISCOVERY CONDUCTED

Plaintiffs thoroughly investigated issues affecting certification, the merits of the class claims, and potential damages for such claims. *See id.* at ¶¶ 4, 7-10; Decl. S. Escobar Cabrera, ¶¶ 3, 5-8; Decl. J. Escobar Cabrera, ¶¶ 3, 5-8. Plaintiffs worked during the time all of Defendant's policies and practices at issue in the Complaint were in effect and provided information regarding these policies and practices, enabling pre-filing investigations to take place. *See* Decl. S. Escobar Cabrera, ¶¶ 2-3, 5-8; Decl. J. Escobar Cabrera, ¶¶ 2-3, 5-8. The Parties engaged in informal discovery and exchange of documents, including a representative sampling of employee data, such as timecards, paystubs, payroll data, and relevant policies for the entirety of the statute of limitations applicable to the asserted claims. The discovery covered all aspects of the asserted claims, including certification issues, merits issues, damages, the scope and configuration of Class Members, the content and implementation of the wage and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas. *See* Decl. Rodriguez, ¶¶ 7-8, 10. The information allowed Plaintiffs to determine the extent and frequency of any violations in accordance with Plaintiffs' contentions and create an accurate damages model to assess the reasonableness of any settlement. *See id.*

IV. NEGOTIATION AND PROPOSED SETTLEMENT

a. Plaintiffs and Defendant Engaged in Extensive Arm's Length Negotiations

The final settlement occurred only after extended, arm's length negotiations. Over the course of approximately fifteen (15) months, Plaintiffs have been investigating the claims and discussing with Defendant's counsel the merits of the claims and issues present in this case. *See id.* at ¶¶ 6-10. The Parties exchanged substantial amounts of information and legal analysis in connection with these discussions. *See id.* It was only after these extended discussions, which included a full day's mediation with Russ J. Wunderli, Esq., that the Parties were able resolve all claims and enter into the Agreement. *See id.* at ¶ 9.

b. The Terms of the Agreement

1. The following groups of individuals are covered by the Agreement: (a) Class Members, which include all individuals who have, or continue to, work for Defendants in California as non-exempt employees from July 20, 2019, up to either (1) the Preliminary Approval Date, or (2) sixty (60) days after the Agreement is signed (October 8, 2024), whichever is earlier; and (b) Aggrieved Employees, which include all non-exempt employees who have, or continue to, work for Defendant in California from July 18, 2022, up to either (1) the Preliminary Approval Date or (2) sixty (60) days after the Agreement is signed (October 8, 2024), whichever is earlier. *See Exhibit A, ¶¶ 1.2, 1.5.* There are approximately 869 Class Members and 400 Aggrieved Employees. *See Decl. Rodriguez, ¶ 10.*

2. Defendant will pay the Gross Settlement Amount of \$685,000, which is exclusive of the employer's share of payroll taxes. *See Exhibit A, ¶ 5.1.* No portion of the Gross Settlement Amount will revert to Defendant. *See id.* at ¶ 5.6. Aggrieved Employees will still be paid their share of the PAGA Payment regardless of whether they opt out of being Class Members. *See id.* at ¶¶ 7.5.1, 7.8.3.

3. Up to \$10,000 will be paid to each of the Plaintiffs as an Enhancement Payment. This amount will be in addition to any amount Plaintiffs may be entitled to under the terms of the Agreement. *See id.* at ¶ 5.4.

4. Subject to Court approval, the Parties have selected ILYM Group, Inc., to act as the Settlement Administrator, who has provided a maximum cost estimate of \$12,850. *See Exhibit D (ILYM Group, Inc., Bid); Exhibit A, ¶ 1.33; Decl. Rodriguez, ¶ 23.*

1 5. The Parties agree that \$40,000 of the Gross Settlement Amount shall be allocated to
2 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
3 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. See Exhibit A, ¶
4 5.5. Given the risk to proving the claims on the merits, the derivative nature of the penalties, the efforts
5 by Defendant to maintain compliant policies and take corrective action, the presence of what may likely
6 be deemed good faith disputes, and the Court's discretion to reduce any penalty award, Plaintiffs
7 believe the \$40,000 PAGA Payment allocation represents a meaningful settlement aimed at deterring
8 non-compliance given the facts of this case. See Decl. Rodriguez, ¶¶ 6-11; see also *Nordstrom Com.*
9 *Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims
10 based on their being disputed and being part of a class settlement which was evaluated based on the
11 terms of the agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, *8 n.2
12 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v.*
13 *Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA
14 claims at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016
15 WL 5462451, *7 (N.D. Cal. 2016) (approving \$10,000 PAGA settlement allocation where total PAGA
16 penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox*
17 *Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily
18 approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S.
19 Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award
20 alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D.
21 Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson*
22 *& Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in
23 \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal.
24 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S.
25 Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000
26 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated
27 value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, *7 (E.D. Cal. 2012)
28 (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*,

2012 WL 5941801, *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

6. The Parties agree that up to Thirty Five Percent (35%) of the Gross Settlement Amount (\$239,750) will be paid for Plaintiffs' attorneys' fees incurred in the litigation of this case. Defendant will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2. Additionally, the Parties agree that Plaintiffs will also be entitled to the actual litigation costs as approved by the Court in an amount not to exceed \$10,000. *See id.* The proposed notice to be sent to Class Members will state this information. *See* Exhibit F.

7. Any allocated amounts under the Agreement for Settlement Administrator Costs, Enhancement Payments, and attorney's fees and costs that are not ultimately awarded by the Court will remain part of the Net Settlement Amount and be paid out to Participating Class Members on a pro rata basis as set forth in the Agreement. *See* Exhibit A, ¶¶ 5.1-5.5, 5.8. These amounts will be paid out from the Gross Settlement Amount, not in addition to the Gross Settlement Amount. *See* Exhibit A, ¶¶ 5.1-5.5.

8. Class Members who fail to timely opt-out of this settlement will waive all Released Class Claims as set forth in the Agreement. *See* Exhibit A, ¶¶ 1.5, 1.14, 1.26, 1.30, 1.32, 6.1. Aggrieved Employees will waive all Released PAGA Claims as set forth in the Agreement regardless of whether they opt out of being a Class Member. *See id.* at ¶¶ 1.2, 1.14, 1.31-1.32, 6.2, 7.5.1.

9. For any portion of the Net Settlement Amount or PAGA Payment allocated to Participating Class Members and/or Aggrieved Employees that is not claimed by them by cashing their respective settlement checks within 180 calendar days of issuance, that remaining amount shall be donated equally, *i.e.*, 50/50 to Capital Pro Bono, Inc., and the Center for Workers' Rights under the doctrine of *cy pres*. *See* Exhibit A, ¶ 5.6. Because the Agreement provides for all funds such that there is no residue, the provisions of California Civil Procedure Code section 384 are inapplicable. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718, 720 (2006). The designated beneficiaries clearly promote the law consistent with the objectives and purposes underlying the lawsuit as they are non-profits aimed at assisting employees with wage and hour claims who cannot afford legal representation,

1 including providing representation for employees in wage claims before the California Labor
2 Commissioner. *See id.* at 722-724; *see also* Decl. Rodriguez, ¶¶ 26-35.

3 **c. Allocation of Settlement Funds**

4 Payment to Participating Class Members and Aggrieved Employees will not require the
5 submission of a claim form. A Net Settlement Amount will be determined by subtracting from the
6 Gross Settlement Amount any attorneys' fees and costs, Enhancement Payments to the Class
7 Representatives, Settlement Administrator Costs, and PAGA Payment that are approved and/or
8 awarded by the Court. Each Class Member's share will be determined by dividing their total weeks
9 worked within the Class Period by the total weeks worked by all Class Members within the Class
10 Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class
11 Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the
12 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the
13 PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim
14 Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the
15 Aggrieved Employee's individual share. *See* Exhibit A, ¶¶ 1.17, 5.5, 5.8.

16 **V. THE PROPOSED PROCEDURES TO NOTIFY CLASS MEMBERS SATISFY DUE**
17 **PROCESS AS THEY PROVIDE THE BEST NOTICE PRACTICABLE UNDER THE**
18 **CIRCUMSTANCES**

19 It is not required that Class Members be given actual notice of a class settlement; instead, the
20 best practicable notice under the circumstances is all that is required. *See Silber v. Mabon*, 18 F.3d
21 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017);
22 *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991, *12-14 (N.D. Cal. 2017); *Wright v.*
23 *Linkus Enters.*, 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In *Silber v. Mabon*, 18 F.3d 1449 (9th Cir.
24 1994), the Court rejected a class member's argument that he had not received due process because he
25 did not receive notice until after the opt out period, finding that, so long as the notice process utilized is
26 the best practicable under the circumstances, due process is satisfied even if there is no actual receipt of
27 the notice. *See Silber*, 18 F.3d at 1453-1454. A similar finding was made in *Briseno v. Conagra*
28 *Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017). With regard to any potential for undeliverable notice
mailings, the Court in *Rannis v. Recchia*, 380 F.App'x 646 (9th Cir. 2010) found that class members

1 who did not receive actual notice due to their mailings being deemed undeliverable were still properly
2 held to be part of the class settlement because they received the best notice practicable under the
3 circumstances. *See Rannis v. Recchia*, 380 F.App’x at 650-651. In *Noel v. Thrifty Payless, Inc.*, 7
4 Cal.5th 955, 980-984 (2019), the California Supreme Court noted that California has adopted a similar
5 approach regarding providing notice to class members.

6 Under the proposed notice procedures, Class Members will have sixty (60) days from the date
7 of mailing to review and respond to the Notice of Settlement, which will also be available online. *See*
8 Exhibit A, ¶¶ 1.21, 7.2. The Notice of Settlement contains all information necessary for a Class
9 Member to assess the litigation, the settlement, and whether they want to participate, object, or opt-out.
10 *See id.* at ¶¶ 7.2, 7.5.1-7.5.3; Exhibit F. National change of address database searches, skip-traces, and
11 surveying of current employees will be utilized as set out in the Agreement to provide the best practical
12 means of ensuring Class Members receive the notice mailing. *See* Exhibit A, ¶¶ 7.3-7.4. Any
13 individual whose initial mailing was deemed undeliverable will have additional time to respond. *See*
14 *id.* at ¶ 7.4. Additional time to respond will also be provided to cure any deficiencies in opt-outs,
15 objections, or disputes. *See id.* ¶ 7.5.4. This notice method is regularly utilized in wage and hour class
16 actions and similar to the one approved in *Rannis*. Thus, the proposed procedures for notifying Class
17 Members satisfy due process and should be approved in this case.

18 **VI. THE AGREEMENT WARRANTS PRELIMINARY APPROVAL AS IT IS FAIR,**
19 **REASONABLE, AND ADEQUATE AS TO ALL CLASS MEMBERS BASED ON THE**
20 **FACTS OF THIS CASE**

21 A class action may not be dismissed, compromised, or settled without Court approval and the
22 decision to approve or reject a settlement is committed to the Court’s sound discretion. *See* Cal. Rules
23 of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)¹; *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th
24 224, 234-35 (2001); *see also* Cal. Lab. Code §§ 2699(l)(2). However, “[d]ue regard should be given to
25 what is otherwise a private consensual agreement between the parties. The inquiry ‘must be limited to
26 the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
27 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole,

28 ¹The California Supreme Court has authorized California’s trial courts to rely on these federal resources to decide class certification issues. *See Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

1 is fair, reasonable and adequate to all concerned.” See *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
2 1801 (1996); see also *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1118 (2009); *In re*
3 *Microsoft I-V Cases*, 135 Cal.App.4th at 723; *Nordstrom Com. Cases*, 186 Cal.App.4th at 581. The law
4 favors settlement of lawsuits, particularly class actions and other complex cases where substantial
5 resources can be conserved by avoiding the time, expense, and rigors of formal litigation. See
6 *Cellphone Termination Fee Cases*, 180 Cal.App.4th at 1117-1118; *In re Microsoft I-V Cases*, 135
7 Cal.App.4th at 723 n.14; *Nordstrom Com. Cases*, 186 Cal.App.4th at 581; see also *Neary v. Regents of*
8 *Univ. of Cal.*, 3 Cal.4th 273, 277-81 (1992).

9 **a. The Terms of The Settlement Are Fair and Within the Range of Reasonableness**

10 The purpose of the Court’s preliminary evaluation of a proposed class action settlement is to
11 determine only whether it is within the range of possible approval such that notice to the class of its
12 terms and conditions and the scheduling of a formal fairness hearing is warranted. See *Wershba*, 91
13 Cal.App.4th at 234-35. If the Court finds a proposed settlement falls within “the range of
14 reasonableness,” it should grant preliminary approval of the class action settlement. See, e.g., *North*
15 *County Contr.’s Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal.App.4th 1085, 1089-90 (1994); *Kullar v.*
16 *Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 133 (2008). Factors to consider in determining whether
17 the settlement is fair, reasonable, and adequate include the strength of the plaintiff’s case, the risk,
18 expense, complexity and likely duration of further litigation, the risk of maintaining class action status
19 through trial, the amount offered in settlement, the extent of discovery completed and the stage of the
20 proceedings, the experience and views of counsel, the presence of a governmental participant, and the
21 reaction of the class members to the proposed settlement. See *Dunk v. Ford Motor Co.*, 48 Cal.App.4th
22 at 1801. However, this Court should begin its analysis with a presumption that the proposed settlement
23 is fair. “A presumption of fairness exists where: (1) the settlement is reached through arm’s length
24 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
25 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
26 small.” *Id.* at 1802.

1 **i. The Agreement is a Result of Extensive, Non-Collusive Arm’s Length**
2 **Negotiations Between the Parties**

3 Settlement of this case was reached only after substantial litigation and extensive arm’s length
4 negotiations lasting nearly fifteen (15) months, which included a full day mediation. *See Decl.*
5 Rodriguez, ¶¶ 8-9. At all times, the negotiations were adversarial, although still professional in nature.
6 *See id.*

7 **ii. The Extent of Investigation and Discovery Completed Provided Ample**
8 **Information to Enter Into an Informed and Reasonable Settlement**

9 The Parties were in possession of all necessary information during the negotiations. The Parties
10 engaged in substantial informal discovery, which included all necessary components for evaluating the
11 class claims and creating an accurate damages model. *See id.* at ¶¶ 7-11. Plaintiffs were in possession
12 of this information prior to calculating any damages in this case. *See id.* As a result, Plaintiffs were
13 able to make a reasonable estimation of Defendant’s potential liability. *See id.* For these reasons, the
14 settlement now before the Court was reached at a stage where “the parties certainly have a clear view of
15 the strengths and weaknesses of their cases” sufficient to support the settlement. *See Boyd v. Bechtel*
16 *Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

17 **iii. Plaintiffs’ Counsel are Experienced in Similar Litigation**

18 Plaintiffs’ counsel have considerable experience in complex litigation such as class and PAGA
19 actions. *See Decl. Rodriguez*, ¶¶ 13-21. Thus, Plaintiffs’ counsel are qualified to evaluate the class
20 claims, the value of settlement versus moving forward with litigation, and viability of possible
21 affirmative defenses. Plaintiffs’ counsel believe that the Agreement is fair, reasonable, and adequate in
22 light of the risks associated with the claims, the uncertainties of complex litigation, and the secured
23 benefit to Class Members. *See id.*

24 **iv. The Settlement is Fair, Reasonable, and Adequate Based on the Strength of**
25 **Plaintiffs’ Case and the Risks and Costs of Further Litigation**

26 Plaintiffs’ claims and the ability to obtain and maintain certification all the way through trial
27 were heavily disputed by Defendant. *See Decl. Rodriguez*, ¶¶ 6, 10. Based on the records and facts of
28 this case, Plaintiffs have secured a gross recovery of approximately 4.13% of the maximum value of the

1 claims in this matter and between 9.5% and 32.16% of the more realistic range of recovery. *See Decl.*
2 Rodriguez, ¶¶ 10-11. The net recovery represents approximately 2.14% of the maximum value of the
3 claims in this matter and between 4.93% and 16.68% of the more realistic range of recovery. The
4 average net award is approximately \$408.80. *See id.*

5 This settlement is a reasonable compromise of the class and PAGA claims, and is within the
6 percentile ranges of the total available damages that have been approved in other class settlements. *See*
7 *Wershba*, 91 Cal.App.4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139
8 (1990); *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re*
9 *Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in
10 settlement of 6% of maximum potential recovery after reduction for attorney’s fees was higher than
11 median percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from
12 2000 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017)
13 (approving a settlement where the net recovery to class members was approximately 7.5% of the
14 projected maximum recovery amount); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS
15 130878 (E.D. Cal. 2017) (approving a settlement with a gross recovery of 11% of the projected
16 maximum damages available and a net recovery of approximately 6.7% of the projected maximum
17 recovery); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal. 2015) (approving a
18 settlement where the gross recovery was approximately 8.5% of the projected maximum recovery);
19 *Schiller v. David’s Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal. 2012) (“Class
20 Members will receive an average of approximately \$198.70, with the highest payment to a Class
21 Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is
22 highlighted by the fact that there was no objection to the settlement amount or the attorneys’ fees
23 requested.”); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) (“the
24 results achieved in this case were very favorable. Class members are provided with immediate
25 monetary relief, with an average award of around several hundred dollars and a minimum award of
26 \$50”).

1 **v. The Proposed Settlement is a Reasonable Compromise of Claims**

2 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional
3 information be presented in class action settlements “to ensure that the recovery represents a reasonable
4 compromise, given the magnitude and apparent merit of the claims being released, discounted by the
5 risks and expenses of attempting to establish and collect on those claims by pursuing the
6 litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399
7 (2010), clarified that *Kullar* does not require an illusory prediction of the outer reaches of exposure
8 without taking into account the actual risks of litigation such as dispositive motions and trial. *Kullar*
9 also does not require an explicit statement of the maximum amount to be recovered if a plaintiff
10 prevailed on all the claims, provided there is a record that allows “an understanding of the amount that
11 is in controversy and the realistic range of outcomes of the litigation.” *Id.* at 409.

12 Plaintiffs have thoroughly set forth the realistic range of outcomes in this litigation as well as
13 the data points relied upon in reaching these ranges. *See* Decl. Rodriguez ¶¶ 10-11. The record
14 demonstrates that the compromises made by Plaintiffs were reasonable and have resulted in a
15 settlement with recovery percentage well within the range of what has been found to be sufficient in
16 several other cases. *See, supra*, Section VI.a.iv; *see also* *Linney v. Cellular Alaska P’ship*, 151 F.3d
17 1234, 1242 (9th Cir. 1998) (“The fact that a proposed settlement may only amount to a fraction of the
18 potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate
19 and should be disapproved”); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) (“In
20 fact there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth
21 or even a thousandth part of a single percent of the potential recovery”).

22 **b. Provisional Certification of the Class is Appropriate**

23 Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-
24 defined community of interest in the questions of law and fact involved affecting the parties to be
25 represented.” *Dunk*, 48 Cal.App.4th at 1806. The “community of interest” element “embodies three
26 factors: (1) common questions of law or fact predominate; (2) class representatives with claims or
27 defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.*
28 Here, the Parties agree that, for the purposes of settlement, these prerequisites are met. *See* Exhibit A.

1 **i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous**

2 The proposed settlement class is ascertainable because all putative Class Members can be
3 readily identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7
4 Cal.5th 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex,*
5 *Inc.*, 166 Cal.App.4th 1325, 1334 (2008). The numerosity requirement is met because there are 869
6 individuals who fall within the definition of Class Member, which makes joinder of all members
7 impracticable. *See Gay v. Waiters' & Dairy Lunchmen's Union*, 489 F.Supp. 282 (N.D. Cal. 1980),
8 *aff'd* 694 F.2d 531 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal.App.3d 1017, 1030 (1972) (noting no
9 set minimum to meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is
10 acceptable). Thus, these requirements are satisfied.

11 **ii. The Commonality, Predominance, and Typicality Requirements are Met**

12 The commonality requirement is met when there are questions of law or fact regarding the class
13 as a whole. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). Commonality requires
14 only that some common legal or factual questions exist; Plaintiffs need not show that all issues in the
15 litigation are identical. *See Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v.*
16 *Superior Court*, 12 Cal.3d 447, 460 (1974). Common questions of law or fact must also predominate
17 over individual questions and class-wide treatment of a dispute must be superior to individual
18 litigation.² *See Richmond*, 29 Cal.3d at 469. Predominance requires a putative class be sufficiently
19 cohesive to warrant adjudication by representation. *See Hanlon*, 150 F.3d at 1022. The typicality
20 requirement is met when claims of the named representative are typical of those of the class, though
21 “they need not be substantially identical.” *Id.* at 1020; *Classen v. Weller*, 145 Cal.App.3d 27, 46-47
22 (1983).

23 The common questions of law and fact in this case stem from Plaintiffs’ contention that
24 Defendant violated California law by 1) failing to pay for all hours worked as a result of Defendant’s
25 failure to accurately record all hours worked, 2) deducting time from employees’ hours worked,
26 including deducting forty-five (45) minutes for meal periods that were shorter or not received; 3)

27
28

²When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1 failing to correctly calculate employees' regular rates of pay when they earned different rates of pay in
2 the same week, 4) failing to authorize and permit all meal and rest periods, 5) failing to keep accurate
3 records of employee's hours worked, including start and stop times for any meal periods, and 6) failing
4 to pay all business expenses incurred, including mileage and personal cellphone expenses. *See* Exhibit
5 B. The waiting time penalties, unfair competition, and PAGA claims are derivative of these violations.
6 *See id.* Plaintiffs and the Class Members seek the same remedies under state law. Under these specific
7 circumstances, the commonality and predominance requirements are satisfied. Regarding the typicality
8 requirement, Plaintiffs contends they suffered from the same unlawful policies, treatment, and
9 circumstances as Class Members did, will request the same remedies, and will rely on the same
10 methods of proof to establish liability and damages. *See id.* Thus, the typicality requirement is also
11 satisfied for settlement purposes.

12 **iii. The Adequacy Requirement is Met**

13 The adequacy of representation requirement is met if the named representative and counsel have
14 no interests adverse to those of the putative class members and are committed to vigorously prosecuting
15 the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60
16 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the proposed Agreement,
17 Plaintiffs and the putative Class Members will receive a pro rata share of the settlement based on the
18 number of workweeks they worked for Defendant. *See* Exhibit A. Finally, any settlement class
19 member who wishes to opt-out of the settlement may do so, and he or she may also dispute the number
20 of workweeks stated in the Notice of Settlement (Exhibit F).

21 There is no conflict of interest between Plaintiffs and Class Members. Plaintiffs and Plaintiffs'
22 counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class.
23 Plaintiffs' counsel, with Plaintiffs' assistance, thoroughly investigated the claims made in this case by
24 speaking with Plaintiffs and reviewing substantial amounts of documents. Plaintiffs' counsel thereafter
25 engaged Defendant's counsel in settlement discussions over the course of approximately fifteen (15)
26 months. Moreover, Plaintiffs' counsel has experience defending and bringing wage and hour claims.
27 Because Plaintiffs' counsel has vigorously pursued Plaintiffs' and the Class Members' claims, the
28 adequacy requirement is met. *See generally* Decl. Rodriguez.

1 **VII. ATTORNEY’S FEES AND COSTS, ENHANCEMENT PAYMENTS TO THE CLASS**
2 **REPRESENTATIVES, AND SETTLEMENT ADMINISTRATOR COSTS TO BE**
3 **REQUESTED IN CONNECTION WITH FINAL APPROVAL**

4 Plaintiffs are not requesting any determination with respect to attorney’s fees and costs,
5 Enhancement Payments, or Settlement Administrator Costs at this time. Rather, should the Court grant
6 preliminary approval, Plaintiffs will make the request for these amounts as set out in the Agreement as
7 part of their final approval briefing. Specifically, Plaintiffs will request the Court award attorney’s fees
8 in the amount of \$239,750 (35% of the Gross Settlement Amount), costs in an amount not to exceed
9 \$10,000, Settlement Administrator Costs in an amount not to exceed \$20,000, and an Enhancement
10 Payment for the Class Representatives in the amount of \$10,000 each.

11 Plaintiffs believe an award of attorney’s fees under the common fund doctrine is appropriate in
12 this case as there is a sufficiently identifiable class of beneficiaries (*e.g.* the settlement class), the
13 benefits received can be accurately traced to the settlement Plaintiffs and Class Counsel were able to
14 negotiate on behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as
15 the fee request is a specific, lump-sum percentage of the fund. *See Laffitte v. Robert Half Internat.,*
16 *Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir.
17 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) (“A lawyer who recovers a common
18 fund for the benefit of persons other than . . . her client is entitled to a reasonable attorney’s fee from
19 the fund as a whole”). Additionally, the potential maximum amounts allocated are within ranges
20 typically approved by Courts, including Sacramento County Superior Court and the District Court for
21 the Eastern District of California. *See Decl. Rodriguez*, ¶ 23; *see also Martin v. Ameripride Servs.*,
22 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting cases); *Birch v. Office Depot, Inc.*,
23 USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a \$16 million wage
24 and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern District, Case No.
25 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class action settlement);
26 *West v. Circle K Stores, Inc.*, 2006 U.S. Dist. LEXIS 76558, *7-*8, *12, *27 (E.D. Cal. 2006)
27 (awarding a \$15,000 representative enhancement where 10,000 class members were to receive a gross
28 award of approximately \$500 each from the \$5,000,000 settlement); *Dent v. ITC Serv. Croup*, 2013
U.S. Dist. LEXIS 139359, *9-*10, *15-*16 (D. Nev. Aug. 6, 2013) (awarding a \$15,000 representative

enhancement out of a \$150,000 settlement for approximately 530 class members); *Patel v. Nike Retail Services, Inc.*, 2019 WL 2029061, *2 (N.D. Cal. 2019) (\$5,261 for settlement administrator's fees was not excessive where PAGA group consisted of 40 employees).

Plaintiffs' final approval briefing will include information and analysis regarding the appropriateness of the fee percentage sought, a lodestar cross check of the requested fee, a detailed declaration from Plaintiffs regarding their time spent on the case as well as any risks and burdens incurred as the Class Representatives, an itemized costs spreadsheet, and a declaration from the Settlement Administrator detailing the work performed and Settlement Administrator Costs incurred. *See Decl. Rodriguez ¶¶ 22-23.* The Notice of Settlement will state the amounts to be requested to provide Class Members the ability to comment thereon, providing evidence of whether the requested amounts are reasonable. *See Exhibit F at pg. 2, § II.A; see also In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, 71 (C.D. Cal. 2005) ("the absence of objections or disapproval by class members to class counsel's fee request further supports finding the fee request reasonable"). Any allocated amounts not ultimately awarded by the Court will be distributed to Class Members pro rata. *See Exhibit A, ¶¶ 5.2-5.4, 5.8.*

VIII. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that this Court preliminarily and conditionally certify the class for settlement purposes; grant preliminary and conditional approval of the proposed settlement; approve the proposed notification procedures, including the Notice of Settlement and proposed deadlines relating thereto; and schedule the final approval hearing. A copy of Plaintiffs' proposed order is being filed concurrently herewith.

Shimoda & Rodriguez Law, PC

Dated: October 8, 2024

By: 
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Justin P. Rodriguez
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individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

SALVADOR ESCOBAR CABRERA and
JUAN ESCOBAR CABRERA, individually
and on behalf of all other similarly situated
employees,

Plaintiffs,

vs.

MIKE MCCALL LANDSCAPE, INC., a
California Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 23CV005083

*Assigned for All Purposes to Hon. Lauri A. Damrell
Department 22*

CLASS ACTION

**DECLARATION OF JUSTIN P. RODRIGUEZ IN
SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No. A-05083-001

Date: November 1, 2024

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: July 20, 2023

FAC Filed: November 20, 2023

Trial Date: None Set

1 I, Justin P. Rodriguez, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiffs Salvador Escobar Cabrera and Juan Escobar Cabrera
4 (“Plaintiffs”) herein. I am making this declaration on behalf of Plaintiffs, the putative class members,
5 and in support of Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement
6 (“Motion”). A true and correct copy of the Joint Stipulation Regarding Class Action and PAGA
7 Settlement and Release (“Agreement”) in this matter is filed with this Motion as Exhibit A.

8 2. Pursuant to the Rule 2.99.05 of the Local Rules for the Superior Court of California,
9 County of Sacramento, I have reviewed the Court’s class action and PAGA settlement checklist and
10 believe I have prepared the moving papers in compliance with the checklist as well as the California
11 Rules of Court.

12 3. This case was brought as a wage and hour class action based on Plaintiffs’ contention
13 that Defendant Mike McCall Landscape, Inc. (“Defendant”), violated California law by failing to pay
14 overtime wages, failing to pay minimum wages, committing meal and rest period violations, failing to
15 provide accurate wage statements, failing to pay all final wages, failing to reimburse business expenses,
16 failing to pay prevailing wages, and engaging in unfair competition. Plaintiffs also alleged liability for
17 civil penalties under the Private Attorneys General Act (“PAGA”). These claims were based
18 allegations that Defendant violated California law by 1) failing to pay for all hours worked as a result of
19 Defendant’s failure to accurately record all hours worked, 2) deducting time from employees’ hours
20 worked, including deducting forty-five (45) minutes for meal periods that were shorter or not received;
21 3) failing to correctly calculate employees’ regular rates of pay when they earned different rates of pay
22 in the same week, 4) failing to authorize and permit all meal and rest periods, 5) failing to keep accurate
23 records of employee’s hours worked, including start and stop times for any meal periods, and 6) failing
24 to pay all business expenses incurred, including mileage and personal cellphone expenses. The PAGA,
25 waiting time penalty, wage statement violation, and unfair competition claims also derive from these
26 violations.

27 4. Plaintiffs are the only named representatives in this matter. From our initial
28 investigations of Plaintiffs’ claims and documents, we believed these claims had merit and could be

maintained as a class action. We filed the action on or about July 20, 2023. Plaintiffs exhausted administrative remedies through the Labor and Workforce Development Agency (“LWDA”) prior to amending the Complaint to add a PAGA claim. Plaintiffs filed a notice with the LWDA on July 18, 2023, setting forth the facts and theories of liability. A true and correct copy of the notice filed with the LWDA is being filed with this Motion as Exhibit C. A copy of the notice was also sent to Defendant via certified mail and the \$75.00 filing fee was remitted to the LWDA at that time. There was no response by the LWDA regarding its intent to investigate the claims alleged in Plaintiffs’ notice for more than 65 days. As such, Plaintiffs became authorized to commence a civil action under the PAGA and filed a First Amended Complaint on November 20, 2023. A true and correct copy of Plaintiffs’ operative Complaint is filed with this Motion as Exhibit B. A copy of the First Amended Complaint was uploaded to the LWDA, after we received an endorsed copy back from Court.

5. Currently, there is no date set for a motion to certify the class and there is no trial date.

6. Defendant is represented in this matter by Bowles & Verna LLP. From the beginning, Defendant has contested the merits of this case, the suitability of the case for class action or representative treatment, the manageability of the case at trial, and Plaintiffs’ ability to prove a violation in each pay period for each employee among other defenses and contentions they made challenging the propriety of this action. Defendant further contended, even assuming there was a finding supporting the imposition of PAGA penalties, that the Court would likely exercise its discretion to substantially reduce any such penalties owed based on evidence of good faith attempts to comply with California Labor Code obligations by Defendant. Notwithstanding its agreement to settle this matter, Defendant believe the practices Plaintiffs are contending are unlawful either do not exist or, to the extent they do exist, fully comply with all state and federal employment laws with respect to Plaintiffs and Class Members. Also, Defendant has contended that this matter is not appropriate for class certification outside of this proposed class settlement.

7. Based on the expected testimony from Plaintiffs and Class Members, a review of Defendant’s policies and procedures and other documents relating to the alleged claims, information on the number of Class Members, Class Members’ dates of employment, and a representative sample of Class Members’ payroll data, the scope of the potential damages to Plaintiffs and Class Members in

light of the claims alleged, the uncertainty in the law with regard to certification, and the negotiations that have taken place, I am convinced that the proposed settlement is in the best interest of the class. The length and risks of trial and other normal perils of litigation that impact the value of the claims were also considered and weighed in reaching the Agreement. In addition, I carefully considered the prospect of potential class certification issues as well as the uncertainty of class certification, the difficulties of complex litigation, and the lengthy process of establishing specific damages and various possible delays and appeals in agreeing to the proposed settlement. I further considered the fact that penalties under the PAGA could be substantially cut at the discretion of the Court even if Plaintiffs were successful on proving those claims and there was risk that a Court could find no willfulness in the failure to pay wages at separation, which would eliminate the value of the waiting time penalty claim entirely. Overall, I believe it is more beneficial to secure a guaranteed benefit to the class now rather than to proceed with litigation and potentially obtain zero funds to the class due to legal or factual issues in the case.

8. My office, including my partner, Galen T. Shimoda, my former associate Brittany V. Berzin, my associate, Renald Konini, our paralegal, and myself, along with Plaintiffs' assistance, thoroughly investigated the merits of the claims and potential damages for such claims. The parties engaged in informal discovery and exchange of documents, including a representative sampling of employee data, such as timecards, paystubs, payroll data and relevant policies for the entirety of the statute of limitations applicable to the alleged claims. The discovery covered all aspects of the asserted claims, including certification issues, merits issues, damages, the scope and configuration of Class Members, the content and implementation of the wage and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas. From this production we were able to determine information critical to a reliable damages analysis such as the average hourly rate, average daily hours worked, average number of workweeks and pay periods that had potential violations based on the asserted claims, the frequency with which violations occurred in a given week and/or pay period, and the number of former employees. This information allowed my office to assess both liability and damages and create an accurate damages model. Plaintiffs assisted in all aspects of this litigation including providing factual information relating to Plaintiffs' and Class Members' employment conditions, providing a substantial number of documents, and answering questions regarding

1 Defendant's factual contentions in this matter. This was important because it directly related to our
2 ability to maintain this case as a class action and our ability to obtain a favorable settlement for the class.

3 9. Throughout this litigation our office had numerous communications with Defendant's
4 Counsel discussing our respective positions. The parties engaged in mediation on May 24, 2024, using
5 an experienced mediator, Russ J. Wunderli, Esq. It was only after approximately fifteen (15) months of
6 extensive, arm's length negotiations that the parties were able to reach a settlement, which only occurred
7 after a full-day mediation. The negotiations were at all times contentious and adversarial, though still
8 professional in nature.

9 10. The following represents the maximum recovery for each of Plaintiffs' claims based on
10 my office's analysis of Defendant's relevant policies and the data produced by Defendant, including a
11 sample of time and payroll records for Class Members and information provided in connection with
12 mediation regarding the specific factual allegations made by Plaintiffs. There were approximately 869
13 Class Members who worked approximately 59,714 workweeks in the Class Period, 400 Aggrieved
14 Employees who worked approximately 11,318 pay periods within the one-year penalty claim period, an
15 average base hourly rate of \$17.98, and an average overtime rate of \$26.97.

- 16 a) Minimum Wages: This claim is based on allegations that Defendant failed to pay
17 Plaintiff and Class Members for all hours worked due to Defendant's failure to
18 accurately record all hours worked and the deduction of time from employees' hours
19 worked, including time spent setting up and or putting away materials and equipment on
20 job sites and deducting time for meal periods that were short or not received. Based on
21 the sample data, the maximum damages for this claim is \$655,211.87. This amount is
22 based entirely on liquidated damages as Plaintiffs assumed all such off-the-clock work
23 would also be overtime hours. The weighted average minimum wage rate during this
24 claim period was approximately \$14.25 per hour. On average, Class Members worked
25 four (4) days per week and were required to go back to work to unload jobsite deliveries
26 during the lunch hour approximately two (2) times per month. On average it would take
27 approximately thirty (30) to forty-five (45) minutes each time. Additionally, Class
28 Members would spend between five (5) to ten (10) minutes off-the-clock per day on

1 average readying jobsite materials and equipment either before or after their scheduled
2 shift. This resulted in an average of approximately .77 hours worked off-the-clock each
3 week by class members ($[59,714 \times .77] \times \$14.25 = \$655,211.87$). Defendant heavily
4 disputed any off-the-clock hours being worked and pointed to its written policy
5 requiring all hours worked be documented and submitted for payroll. Furthermore,
6 Defendant contended any potential time off-the-clock spent setting up and/or putting
7 away materials and/or equipment on jobsites would be minimal to non-existent because
8 employees were directed to not start work until clocked in, equipment and/or materials
9 would not need to be secured in any site containers, and the sites worked (generally
10 locations within new housing complexes/subdivisions) were always in close proximity
11 to any needed materials and/or equipment such that “travel” could be less than one-block
12 distance. In addition, Defendant contended that, to the extent employees worked off-
13 the-clock or did not record all their hours worked, it reasonably believed that employees
14 were being compensated for all hours worked. Defendant also pointed to numerous
15 instances in its records where employees worked longer than their scheduled hours and
16 were compensated for that time, including overtime hours. In order to be liable for off-
17 the-clock work, an employer must know or have reason to know it was occurring.
18 *Brinker Rest. Corp. v. Superior Ct.*, 53 Cal.4th 1004, 1051 (2012). A good faith dispute
19 would eliminate liability for liquidated damages for unpaid minimum wages. See Cal.
20 Lab. Code § 1194.2(b). Taking all these factors into account, I believe it is likely a good
21 faith dispute would be found and there would be no recovery for this claim;

- 22 b) Overtime Wages: The basis for this claim is, in part, the same as Plaintiff’s minimum
23 wage claim, *i.e.* off-the-clock hours worked were also overtime hours. As such, it is
24 subject to the same risks identified above. The maximum damages for this claim based
25 on Defendant’s records is \$1,240,074.67 ($[59,714 \times .77] \times \$26.97 = \$1,240,074.67$).
26 This amount does not take into account any potential risks with respect to Plaintiff
27 proving the merits or damages. As noted above regarding the minimum wage claim,
28 Defendant heavily disputed the existence of any off-the-clock work or that any such time

1 would be anything more than nominal at best. The unpaid overtime claim was also
2 based, in part, on Plaintiffs' contention that Defendant failed to pay prevailing wages
3 and/or recalculated the applicable overtime rate of pay when Plaintiffs and Class
4 Members earned prevailing wages and non-prevailing wage overtime in the same
5 workweek. We reviewed the payroll sample and compared all payments to the
6 Department of Industrial Relations online databases for certified payroll records and
7 public works contracts by contractor name and license number. We reviewed every
8 entry for every pay period on the database that appeared for any public works contracts
9 Defendant was associated with. After this review, there were few instances of
10 Defendant employing individuals on prevailing wage projects and the rates of pay
11 appeared to match the applicable rates identified for the county and time period the work
12 was performed in. In those instances, we did not see any overtime hours that were not
13 also prevailing wage overtime hours. For this theory of liability to trigger, the overtime
14 must be worked on non-prevailing wage jobs in the same week that prevailing wages are
15 earned in order for the weighted average regular rate of pay calculation to be applicable.
16 Thus, there was no additional value to the claim based on the regular rate of pay theory
17 of liability from prevailing wage payments. Taking all these factors into account, I
18 believe a more likely range of recovery for this claim is between \$558,033.60 to
19 \$806,048.53 (35% to 55% reduction based on risk);

- 20 c) Meal Periods: This claim is based on allegations that Defendant failed to authorize and
21 permit duty free meal periods by failing to maintain a policy allowing for a second meal
22 period when employees worked longer than ten (10) hours per day and that Defendant
23 required employees to work through their meal periods unloading deliveries of materials
24 and equipment during the lunch hour. The maximum damages for this claim based on
25 Defendant's records is \$1,374,283.32. Class Members worked an average of four (4)
26 days a week and were paid an average of \$17.98 per hour. Plaintiffs contended the
27 payroll records demonstrated a unique violation rate of approximately 32%, *i.e.* 32% of
28 shifts had either no meal period punch, a late meal period punch, a meal period lasting

less than thirty (30) minutes, and/or a shift of more than ten (10) hours without a second meal period. There were approximately 238,856 total shifts worked by class members, which equates to approximately 76,434 meal period violations based on the 32% violation rate. At an average hourly rate of \$17.98, this equates to approximately \$1,374,283.32 in unpaid meal period premiums. This amount does not take into account any potential risks in proving the merits or damages. Defendant contended that Plaintiffs and Class Members were covered by California Wage Order 16, which has an exception to the recording requirement of meal periods, stating “meal periods during which operations cease, do not need to be recorded.” See IWC Order No. 16-2001 ¶ 6(A)(1). Defendant contended operations ceased during the lunch hour as all individuals on-site would stop working to take meals together. This contention posed a substantial risk because the damage calculations for this claim were based entirely on the presumption established by *Donohue v. AMN Servs., LLC*, 11 Cal.5th 58, 78 (2021). To the extent there was no requirement to record meal periods, there would be no basis to utilize the rebuttable presumption. Eliminating the presumption would likely substantially reduce the scope of Plaintiffs’ meal period violation claims to only those instances where the alleged defective meal period policy would be at issue, *i.e.* only those shifts longer than ten hours. Without a presumption based on defective time records or a facially unlawful policy it is very difficult to certify meal period violation claims. Focusing solely violations due to no second meal period, the violation rate would be reduced to approximately 5% and the claim value reduced to \$219,026.17. Taking these factors into account, I believe a more realistic range of recovery for this claim is between \$219,026.17 to \$1,030,712.49 (reduction of 25% based on risk down to the minimum violation rate based on shifts over 10 hours);

- d) Rest Breaks: This claim was based on allegations that Defendant failed to provide a first rest period, electing instead to have employees combine a fifteen (15) minute rest period with a thirty (30) minute meal period later in the day. Additionally, Plaintiff alleged that Defendant’s rest period policy was defective because it omitted any authorizing

1 language regarding the rest periods being available for every four (4) hours worked or
2 “major fraction thereof.” Based on the number of workweeks (59,714) and the number
3 of first rest periods potentially available for Class Member on an average four (4) day
4 workweek (238,856), the maximum damages available for this claim is \$4,294,630.83
5 (238,856 x 17.98 = \$4,294,630.88). However, this does not account for the risk
6 associated with this claim. First, there is no record keeping requirement for rest periods,
7 so this claim would not benefit from the violation presumption outlined in *Donohue*.
8 Defendant heavily contested this claim, alleging that any decision to delay the first rest
9 period was an independent choice by employees so they could all eat their lunches
10 together for a longer period later in the day. Defendant contended Class Members
11 voluntarily chose to work through their first rest periods to complete more work before
12 the day became hotter. This posed a substantial risk to certification. Plaintiffs’ theory of
13 liability based on a deficient rest period policy would have a substantially narrowed
14 scope because liability would only potentially trigger for those shifts that were between
15 four (4) to six (6) hours, six (6) to eight (8) hours, and ten (10) to twelve (12) hours
16 because this is where the lack of “major fraction thereof” language becomes applicable
17 for authorizing the rest period. Focusing solely violations within the *major fraction*
18 *thereof* timing windows, the violation rate would be reduced to approximately 2% and
19 the claim value reduced to \$85,892.62. Taking these factors into account, I believe a
20 more realistic range of recovery for this claim is between \$85,892.62 to \$644,194.63
21 (reduction of 85% based on risk down to the minimum violation rate based on shifts
22 within the major fraction thereof timing windows);

- 23 e) Reimbursement: This claim is based on allegations that Class Members were required to
24 use their personal cellphones for work to communicate with management and also to pay
25 for bridge tolls without being reimbursed. The maximum exposure for this claim is
26 \$689,099.56, which is based on a monthly cell phone bill of approximately \$100 and
27 50% work usage rate (\$11.54 per week equivalent x 59,714 workweeks = \$689,099.56).
28 This amount does not take into account any potential risks associated with this claim.

1 Defendant heavily disputed whether use of personal cell phones was required given that
2 Class Members worked in small teams in close proximity on site and who were
3 supervised by a foreman that was responsible for any communications with the home
4 office. Furthermore, it is unlikely that Class Members all had their own standalone cell
5 phone plans as opposed to being billed as additional lines on a pre-existing plan. In my
6 experience there has always been a range of individuals whose cell phone plans are \$30-
7 \$60 per month as additional lines on a pre-existing plan. Defendant also provided
8 numerous documents showing reimbursements for bridge tolls, making certification very
9 risky as these documents would have required the need to parse between instances that
10 were and were not reimbursed. Thus, it is unlikely that the full amount of damages
11 Plaintiff calculated would be established even if Plaintiff was successful in certifying the
12 class and establishing liability. Based on these risks, I believe a more realistic range of
13 recovery for this claim would be between \$103,364.93 to \$206,729.87 (70%-85%
14 reduction based on potential risk);

- 15 f) Wage Statement: This claim is derivative of the claims above and therefore carries the
16 same risks. The maximum damages for this claim based on the number of pay periods
17 and informal discovery is \$565,950. This amount was calculated using a \$50 initial
18 violation rate for the 11,319 pay periods in the claim period. Labor Code section 226
19 requires a knowing and intentional violation and Defendant contend that to the extent the
20 wage statements it issued to Class Members were incorrect it was not intentional. Based
21 on our research, we did not find any prior Labor Commissioner or court decisions that
22 stated Defendant's practices and/or policies were improper. As such, a "subsequent
23 violation" may not be found for penalty calculation purposes and the exposure analysis
24 was based on an "initial violation" valuation being adopted by any fact finder if this
25 matter went to trial. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207-
26 1209 (2008). This amount does not take into account the potential risks associated with
27 this claim. Because this claim is derivative of Plaintiff's other claims, the same risks
28 identified above for Plaintiff's minimum wages, overtime, meal period, and rest period,

claims apply here as well, substantially affecting the potential value of this claim.

Furthermore, under the recent California Supreme Court case, *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal.5th 1056 (2024), employers now have a good faith dispute defense against wage statement claims. Given the factual and legal disputes outlined herein, I believe it is likely that a Court would find a good faith dispute, eliminating the value of this claim. Thus, I believe it is more realistic that there would be no recovery for this claim;

g) Waiting Time: This claim is derivative of the failure to pay minimum wages, failure to pay overtime, failure to pay prevailing wages, failure to pay sick time, and failure to provide meal and rest periods. Thus, the same risks identified for those claims apply to this claim. The maximum damages for this claim based on the data and information provided by Defendant is approximately \$1,312,468.08. This amount was calculated based on approximately 304 former employees within the three-year claim period who had an average daily rate of \$143.84 ($\$17.98 \times 8 = \143.84). Plaintiffs assumed that the full thirty (30) day penalty period would be applicable for each of the 304 former employees. This amount does not take into account any potential risks associated with the claim. Given the factual and legal disputes outlined herein for each claim that could potentially trigger waiting time penalties, there is substantial risk that Defendant's policies and records would provide it with a good faith affirmative defense, which would eliminate the value of this claim entirely. See *Diaz v. Grill Concepts Servs., Inc.*, 23 Cal.App.5th 859, 868 (2018). Taking these factors into account, I believe it is more realistic that there would be no recovery for this claim;

h) Prevailing Wage and Sick Leave Pay: There was no separate value associated with these claims. The sick leave claim is based on the allegations that the regular rate of pay applicable for sick leave was not correctly calculated when Plaintiffs and similarly situated employees had sick leave and worked prevailing wage jobs within the same workweek. However, the records did not show any workweeks wherein sick leave was used in the same workweek that prevailing wages were earned. Thus, the liability

1 trigger for this claim did not occur for any individuals within the sample. As noted
2 above in 9(b), we reviewed all prevailing wage records and certified payroll reports
3 based on Defendant's name and contractor number in the Department of Industrial
4 Relations databases. In those instances where government records showed that
5 Defendant was being paid under a public works contract, the associated payroll records
6 appeared to match the applicable rates in effect for the counties and time periods at
7 issue. Thus, there did not appear to be any instances where Defendant was being given
8 credit for work under public works contracts that did not also have records of prevailing
9 wage payments being made to Class Members. Given these facts, I believe it is more
10 likely there would not be any recovery associated with these claims;

11 h) PAGA: This claim is derivative of the Labor Code violations identified above and would
12 be subject to all the same risks as the underlying claims it is based on. As noted above,
13 we did not find any prior Labor Commissioner or court decisions stating Defendant's
14 practices and/or policies were improper. As such, a "subsequent violation" may not be
15 found for penalty calculation purposes, and the exposure analysis here is based on an
16 "initial violation" valuation being adopted by any fact finder if this matter went to trial.
17 See *Amaral*, 163 Cal.App.4th at 1207-1209. Additionally, because the data and our
18 independent investigations did not substantiate the sick leave and prevailing wage
19 claims, we did not include any penalty calculation associated with those claims. Based
20 on the payroll data, the maximum exposure for this claim is \$6,463,628, and was
21 calculated per violation as follows:

- 22 • *Minimum Wages*: \$1,131,900 (11,319 pay periods x default \$100 per pay
23 period per Labor Code section 2699);
- 24 • *Overtime*: \$565,950 (11,319 pay periods x \$50 per pay period per Labor
25 Code section 558);
- 26 • *Meal Periods*: \$565,950 (11,319 pay periods x \$50 per pay period per Labor
27 Code section 558);

- *Rest Periods*: \$1,131,900 (11,319 pay periods x default \$100 per pay period per Labor Code section 2699);
- *Wage Statements*: \$1,131,900 (11,319 pay periods x default \$100 per pay period per Labor Code section 2699);
- *Final Wages*: \$604,128 (140 former employees within the penalty statute of limitations. Calculated the same as waiting time penalties pursuant to Labor Code section 256 [$\$17.98 \text{ average hourly rate} \times 8\text{-hour day} \times 30 \text{ days} = \$4,315.20$. $140 \text{ former employees} \times \$4,315.20 = \$604,128$]);
- *Failure to Maintain Accurate Records*: \$200,000 ($\$500 \times 400 \text{ employees within the penalty statute of limitations per Labor Code section 1174.5}$); and
- *Reimbursement*: \$1,131,900 (11,319 pay periods x default \$100 per pay period per Labor Code section 2699).

These amounts do not take into account any of the risks in proving the merits of the underlying claims that the PAGA damages are based on. The identified risks would likely eliminate several of the claims (*e.g.* minimum wages & waiting time penalties), and/or substantially reduce the number of pay periods at issue due to the inability to prove the claims in every pay period for every employee. In addition to the risks on the merits, I believe the Court may exercise its discretion to reduce PAGA penalties in this case because a majority of the civil penalties sought would be in addition to amounts owed for substantive violations, some of the violations are due to technical non-compliance with the Labor Code, such as derivative wage statement violations, and Defendant produced wage and hour policies and other documents related to attempts at complying with the California Labor Code that a Court may find demonstrates a good faith attempt at compliance. Courts are statutorily authorized to use discretion to reduce penalties and the range of discretion used varies substantially. *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82%

1 reduction). The 82% reduction equates to roughly \$9-\$18 worth of civil penalties per
2 pay period per employee depending on the total potential value of the civil penalty (*i.e.*
3 \$50-\$100), which is more in line with actual awards based on my experience and
4 review of awards in other cases. Thus, even if using the maximum values and setting
5 aside risks of proving the claims on the merits, the total exposure may be cut to
6 approximately \$1,163,453.04 (82% reduction) to \$4,524,539.60 (30% reduction) or
7 lower. It is important to note that this discretionary reduction is completely separate
8 and in addition to any risks on the merits. Given the substantial risks associated with
9 the claims, I believe the amount that might ultimately be awarded under this claim
10 would be significantly lower than the maximum civil penalties available. I believe
11 allocating \$40,000.00 to the PAGA claims in this case is appropriate, especially in light
12 of amounts that Courts have approved as reasonable valuations in other cases. *See*
13 *Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to
14 the resolution of PAGA claims based on their being disputed and being part of a class
15 settlement which was evaluated based on the terms of the agreement overall);
16 *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, *8 n.2 (E.D. Cal. 2022)
17 (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v.*
18 *Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving
19 settlement of PAGA claims at 0.6% of total estimated value due to risk of no recovery);
20 *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016) (approving
21 \$10,000 PAGA settlement allocation where total PAGA penalty exposure was
22 approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox Commc 'ns*
23 *California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily
24 approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l,*
25 *LLC*, 2014 U.S. Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA
26 allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford*
27 *Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000
28 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010

U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

11. In summary, Plaintiffs' gross recovery of \$685,000 under the Agreement equals approximately 4.13% of the maximum value of the claims in this matter and between 9.5% and 32.16% of the more realistic range of recovery. After deducting from the Gross Settlement Amount the proposed allocations for attorneys' fees and costs, any Enhancement Payment to the Class Representatives, Settlement Administrator Costs, and the PAGA Payment to the LWDA, the net recovery under the Agreement, \$355,250, represents approximately 2.14% of the maximum value of the claims in this matter. The net recovery also represents between 4.93% and 16.68% of the more realistic range of recovery and is the equivalent of \$5.95 per workweek. The average net award is approximately \$408.80. I believe the Agreement represents a reasonable compromise of claims based on the legal and factual disputes in this case. The ability to secure a guaranteed settlement now and ensure Class Members receive some compensation, rather than proceed to further litigation and potentially recover nothing, was a motivating factor in reaching this Agreement.

12. In agreeing to represent Plaintiffs and take on the case for all Class Members, our office agreed to take this case on a contingency basis, meaning that we would take a percentage of any settlement or judgment should we recover a monetary amount. We took a risk that we would not recover any money in this matter if we were unsuccessful at trial. We also took on the risk that the case

1 may be subject to an unfavorable summary judgment ruling. However, we believe it is important to
2 make sure employees are able to find affordable representation in order to ensure that employers are
3 complying with all their legal obligations towards employees and paying employees all their hard-
4 earned wages.

5 13. I am a shareholder at Shimoda & Rodriguez Law, PC. My law firm is a boutique law
6 practice that focuses primarily on employment litigation, emphasizing wage and hour litigation. I
7 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the
8 Departmental Citation for Academic Achievement in the Philosophy program. I was one of only two
9 recipients of this award out of the entire Philosophy Department. After U.C. Davis, I attended the
10 University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris
11 Doctorate. I graduated in the top 20% of my class and was a member of the Traynor Honor Society at
12 McGeorge. Other academic achievements of mine include receiving a Witkin Award (top grade) in my
13 legal research and writing course, a Witkin Award in complex civil litigation, being a member of the
14 Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from
15 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business &*
16 *Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar
17 Association Diversity Fellow in 2009. I was also a member of the Employment and Labor Law Society
18 and an officer for the Latino Law Students Association from 2009 to 2010.

19 14. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda
20 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp.
21 became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent
22 rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to 2023, I have
23 been recognized as a Super Lawyer (Rising Star). Since 2024, I have been recognized as a Super
24 Lawyer. I have been a panel speaker and presented a number of seminars covering issues in wage and
25 hour litigation in general and complex class and PAGA litigation in particular. These engagements
26 include the following: (1) *Epic Systems*, PAGA, and the Future of Employment Arbitration in
27 California (Sacramento County Bar Assoc., Sept. 2018); (2) Class Actions and PAGA Claims (Assoc.
28 of Defense Counsel of Northern California & Nevada, Jul. 2020); (3) Mediation: The Experienced Trial

1 Lawyers Perspective (Sacramento County Bar Assoc., Sept. 2020); (4) How to Become a Pivotal Part
2 of Any Wage and Hour Practice Group (Sacramento County Bar Assoc., Mar. 2021); (5) Emerging
3 Trends and Issues Relating to Arbitration and PAGA Claims in a Post-Viking River Cruises World
4 (Sacramento County Bar Assoc., Nov. 2022). I was elected to the Sacramento County Bar Association
5 Labor and Employment Law Section's executive committee in 2019 and was the Chair of the executive
6 committee for 2022. I have also been a member of the Presiding Judge Civil Law Advisory Committee
7 for Sacramento County Superior Court since August 2020. My practice focuses on complex civil
8 litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act
9 ("FLSA") claims. I am actively involved in most all of the complex litigation handled by our firm.
10 Class and/or PAGA actions I have litigated or am currently litigating, including the instant case,
11 includes, but is not limited to, the following:

- 12 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 13 • *Adams-Angway v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- 14 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 15 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 16 • *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080
17 (San Joaquin Sup. Ct.);
- 18 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 19 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 20 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
21 Sup. Ct.);
- 22 • *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup.
23 Ct.);
- 24 • *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- 25 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-
26 00271174 (Sac. Sup. Ct.);
- 27 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
28 Ct.);

- 1 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
- 2 Ct.);
- 3 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
- 4 Sup. Ct.);
- 5 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 6 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
- 7 Ct.);
- 8 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 9 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
- 10 00209613 (Sac. Sup. Ct.);
- 11 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 12 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-
- 13 00222101 (Sac. Sup. Ct.);
- 14 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 15 • *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- 16 • *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- 17 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 18 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- 19 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup.
- 20 Ct.);
- 21 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 22 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 23 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac. Sup. Ct.);
- 24 • *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- 25 • *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac. Sup. Ct.);
- 26 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 27 • *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- 28 • *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac. Sup. Ct.);

- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-SCR (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB (E.D. Cal.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovations Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.) ;
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.) ;
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

15. The preceding list does not include those cases where, for various reasons, the case was filed as a class action and/or PAGA action, but did not maintain that status through the end of the case.

16. My partner, Galen T. Shimoda, Esq., worked with me on this matter and assisted with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of plaintiff

attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a number of employment law articles for journals and our firm regularly publishes articles on our firm's website. Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar) Employment Review seminars from 2014 to the present. His speaking engagements include the following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6) CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21, 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section – PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association - PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017); 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,

was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized as a Super Lawyer from 2014 to present.

17. Mr. Shimoda has practiced law in California since being admitted to the State Bar in 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases. Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington & Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and Federal Courts, including up to certification, settlement, preliminary and final approval, and disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel. Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel include the following:

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);

- *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
- *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup. Ct.);
- *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-300000003 (Sac. Sup. Ct.);
- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- *Hernandez v. Snvir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);

- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

18. The preceding list of cases does not include those where, for a variety of reasons, the case was initially filed as a class and/or PAGA action, but did not maintain that status through the end of the case.

19. My associate, Renald Konini, Esq., also worked with me on this case. In May 2011, Mr. Konini graduated from Seton Hall University School of Law. Prior to moving to California, he practiced law in New Jersey. While working for my firm, Mr. Konini has worked on a variety of

individual and class action cases, including those involving wage and hour claims, Private Attorney General Act claims, wrongful termination claims, discrimination claims, retaliation claims, and harassment claims. Mr. Konini passed the July 2016 California Bar Examination and started practicing as an associate at my firm from approximately April 2019 to February 2021. He rejoined my firm in September 2022. Mr. Konini has experience drafting written discovery, taking and defending depositions, calculating class-wide damages, interviewing putative class members, drafting motions and briefs on complex class action procedures, negotiating class and individual damages claims, and communicating with opposing counsel regarding these items in navigating the litigation. Mr. Konini has also worked on other class and/or PAGA wage and hour actions that my firm has filed, namely *Bertelli v. Air Products and Chemicals, Inc.*, Case No. 34-2018-00236898 (Sac. Sup. Ct.), *Carr v. Howroyd-Wright Employment Agency, Inc.*, Case No. 34-2018-00228290 (Sac. Sup. Ct.), *Gomez v. Vander Schaaf Dairy, et al.*, Case No. STK-CV-UOE-2020-0003954 (San Joaquin Sup. Ct.), *Haggins v. Kelly Services, Inc.*, Case No. 34-2017-00220473 (Sac. Sup. Ct.), *Hussaini v. Integrated Resources, Inc.*, et al, Case No. 34-2021-00297152 (Sac. Sup. Ct.), *Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation (D/B/A Children's Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072 (Sac. Sup. Ct.), *Lear v. Raxium, Inc.*, Case No. 21CV004358 (Alameda Sup. Ct.), *Serrano v. Cool Time, LLC*, Case No. 34-2021-00312356 (Sac. Sup. Ct.), *Grebe v. Mary Ann's Baking Co., Inc.*, Case No. 34-2020-00285254-CU-OE-GDS (Sac. Sup. Ct.), *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.), *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.), *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.), *Pek, et al v. Varris Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup. Ct.), *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct). Mr. Konini's practice largely revolves around wage and hour matters, including class and PAGA claims.

20. My former associate, Brittany V. Berzin, attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Psychology. Ms. Berzin received her J.D. from the University of the Pacific McGeorge School of Law. Ms. Berzin joined Shimoda & Rodriguez Law, PC as a law clerk in February 2015 where she gained civil litigation experience working on individual, class action and PAGA employment cases throughout law school. Ms. Berzin also participated in an employment law

1 clinic in 2015 and 2016 that helps low-income workers by providing free legal consultations, advising
2 employees of their legal remedies on a variety of matters (*e.g.*, wage and hour, discrimination,
3 harassment, California leave laws, unemployment, workers' compensation, retaliation, and wrongful
4 termination, etc.) under the supervision of an attorney, preparing wage claims, and providing
5 representation in wage claims before the California Labor Commissioner. From 2016-2017, Ms.
6 Berzin completed an externship at the Federal Public Defenders Office as a Certified Law Student
7 where Ms. Berzin obtained discovery, completed legal research, drafted motions, negotiated plea deals,
8 represented clients in a variety of hearings (*e.g.*, arraignments, motion hearings, sentencing hearings,
9 etc.), and defended a client against five misdemeanor charges in a jury trial in the United States District
10 Court for The Eastern District of California. Ms. Berzin was also a member of the nationally
11 recognized McGeorge Mock Trial Team and went on to coach a high school Mock Trial team in 2018
12 after graduating from law school. In May 2017, Ms. Berzin graduated from the University of the
13 Pacific, McGeorge School of Law with Great Distinction and was inducted into the Order of the Coif,
14 graduating in the top 10% of her class. Ms. Berzin received the Witkin Award for Academic
15 Excellence in Legal Research and Writing, Civil Procedure, Bankruptcy, and Criminal
16 Procedure. From 2020 to 2024, Ms. Berzin has been recognized as a Super Lawyer (Rising Star). Ms.
17 Berzin has been a member of the executive committee of the Sacramento County Bar Association
18 Labor & Employment Section since January 2020, serving as Co-Chair of the committee in 2021. Ms.
19 Berzin has over seven years of experience working on civil litigation and employment law matters.
20 Most of that experience has been specific to analyzing and litigating wage and hour claims. During her
21 time as an associate with my firm, Ms. Berzin worked on a variety of individual, class action, and
22 PAGA cases involving wage and hour claims, such as failure to pay overtime, failure to pay minimum
23 wages, failure to provide meal and rest periods, failure to pay reimbursement expenses, unlawful
24 deductions, failure to keep accurate time records, failure to provide paid sick leave, failure to pay all
25 wages upon separation, unfair competition, breach of contract, independent contractor
26 misclassification, and salaried misclassifications. Some of the class action and/or PAGA cases that Ms.
27 Berzin litigated as lead or co-counsel include the following:
28

- *Arosemena v. Ranchhodrai, Inc., et al.*, Case No. STK-CV-UOE-2019-15963 (San Joaquin Sup. Ct.);
- *Arroyo v. Epic Home Solar*, Case No. 34-2021-00310634 (Sac. Sup. Ct.);
- *Balli v. Brown Box Investments, Inc., et al.*, Case No. 34-2018-00232656 (Sac. Sup. Ct.);
- *Barkhousen, et al. v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Barrios v. American Property Management, Inc.*, Case No. 1:18-cv-00352-AWI-SKO (E.D. Cal.);
- *Callahan v. Creative Alternatives, Inc., et al.*, Case No. 2027518 (Stanislaus Sup. Ct.);
- *Collazo v. T.O.P. Marketing Group, Inc.*, Case No. 34-2022-00314092 (Sac. Sup. Ct.);
- *Cristobal v. BAT Residential Services, Inc.*, Case No. FCS056331 (Solano Sup. Ct.);
- *Coronado v. MGD, Inc.*, Case No. STK-CV-UOE-2021-893 (San Joaquin Sup. Ct.);
- *Estrada v. MAD Security Services, Inc.*, Case No. 34-2021-00300627 (Sac. Sup. Ct.);
- *Ferreya v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- *Finance of America Wage And Hour Cases*, Case No. JCCP 5081 (Orange County Sup. Ct.);
- *Gomez, et al. v. Kleary Masonry, Inc.*, Case No. 34-2020-00278067 (Sac. Sup. Ct.);
- *Gonzalez v. Northcentral Pizza, LLC, et. al.*, Case No. 34-2019-00252018 (Sac. Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Green v. Warden Security Associates, Inc.*, Case No. 22CV396140 (Santa Clara Sup. Ct.);
- *Hampton v. Unlimited Security Specialists, Inc.*, Case No. CV2021-2130 (Yolo Sup. Ct.);
- *Hercules, et al. v. Maximus Services, LLC*, Case No. 34-2019-00268385 (Sac. Sup. Ct.);
- *Insixiengmay v. Hyatt Corporation*, Case No. 2:18-cv-02993-TLN-SCR (E.D. Cal);
- *Kurtz v. Perimeter Security Group, LLC, et al.*, Case No. CU19-083650 (Nevada Sup. Ct.);
- *Leong-Call v. MRB Foods, Inc.*, Case No. 34-2020-00287486 (Sac. Sup. Ct.);
- *Magat v. Medical Care Professionals, Inc., et. al.*, Case No. SCV0042579 (Placer Sup. Ct.);
- *Mayorga v. Brown Strauss, Inc.*, Case No. STK-CV-UOE-2020-0010906 (San Joaquin Sup. Ct.);
- *McGhee v. Salute Incorporated*, Case No. 34-2022-00315317 (Sac Sup. Ct.);

- 1 • *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- 2 • *Meals v. Grass Valley Extended Care, Inc., et al.*, Case No. CU19-083606 (Nevada Sup.
- 3 Ct.);
- 4 • *Munoz v. Wilmor And Sons Plumbing And Construction*, Case No. 34-2021-00306609 (Sac.
- 5 Sup. Ct.);
- 6 • *Ruiz v. CTE Cal, Inc.*, Case No. 34-2020-00289168 (Sac. Sup. Ct.);
- 7 • *Saavedra, et al. v. SMF Global, Inc.*, Case No. 34-2018-00243363 (Sac. Sup. Ct.);
- 8 • *Scarano v. J.R. Putman, Inc., et al.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- 9 • *Scoggins, et al. v. Energy Star Construction, Inc.*, Case No. 34-2018-00243048 (Sac. Sup.
- 10 Ct.);
- 11 • *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.);
- 12 • *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- 13 • *Tracy v. Von Housen's Sacramento, Inc.*, Case No. 34-2020-00282778 (Sac. Sup. Ct.);
- 14 • *Uribe v. Ecoguard Pest Management, Inc.*, Case No. 34-2021-00300650 (Sac. Sup. Ct.);
- 15 • *Vasquez v. Chriswell Home Improvements, Inc.*, Case No. 34-2021-00305938 (Sac. Sup.
- 16 Ct.);
- 17 • *Villarruel, et al. v. General Produce Company, et al.*, Case No. 34-2021-00311463 (Sac.
- 18 Sup. Ct.);
- 19 • *Walker v. Yan Kalika Dental Corporation*, Case No. 34-2021-00305106 (Sac. Sup. Ct.); and
- 20 • *Webb v. Professional Healthcare At Home, LLC*, Case No. FCS055317 (Solano Sup. Ct.).

21 21. The preceding list of cases does not include those where, for a variety of reasons, the
22 case was initially filed as a class and/or PAGA action, but did not maintain that status through the end
23 of the case.

24 22. In connection with any final approval hearing, I will be seeking attorneys' fees and
25 costs, an Enhancement Payment for each of the Class Representatives, and Settlement Administrator
26 Costs as set forth in the Agreement. I will be requesting attorneys' fees and costs pursuant to the
27 common fund doctrine as I believe it to be applicable to the present case pursuant to *Serrano v. Priest*,
28 20 Cal.3d 25, 34-35 (1977), *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul*,

1 *Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989). The facts and case law
2 supporting the requested amounts will be set forth in the final approval motion, including information
3 for the Court to perform a lodestar cross check of the requested attorney's fees, quantify the amount of
4 time spent by Plaintiffs on this case and any further risks and/or burdens incurred as a result of acting
5 as Class Representatives, an updated declaration in support of actual litigation costs and itemized cost
6 spreadsheet, and declaration from the Settlement Administrator detailing the work performed and
7 Settlement Administrator Costs incurred. The amounts and percentages to be requested are consistent
8 and within ranges that have been approved in prior case by the Sacramento County Superior Court (*e.g.*
9 *Blair v. Clark Wagaman Designs*, Case No. 34-2021-00313156 (Sac. Sup. Ct.), approving fees of 35%
10 and an enhancement payment of \$10,000 on January 23, 2023) and the Federal District Court for the
11 Eastern District of California (*e.g. Insixiengmay v. Hyatt Corporation*, Case No. 2:18-cv-02993-TLN-
12 SCR (E.D. Cal), approving fees of 35% and an enhancement payment of \$10,000 on September 23,
13 2024). My firm's expected costs through final approval are not expected to exceed \$10,000. Attached
14 as Exhibit E is a true and correct copy of the costs incurred prior to the filing of this Motion and the
15 expected costs incurred through the final approval and fairness hearing. Any difference in the awarded
16 fees and costs, Class Representatives' Enhancement Payment, and Settlement Administrator Costs and
17 the amounts allocated for each under the Agreement will be added back to the Net Settlement Amount
18 and distributed pro rata to Class Members.

19 23. I have used several class action administrator companies in the wage and hour class
20 actions I have resolved in the past and believe ILYM Group, Inc. will provide the best service to
21 administer the proposed class settlement. ILYM Group, Inc. has provided a quote for the estimated
22 maximum cost of administering the class settlement of approximately \$12,850. A true and correct copy
23 of a cost estimate and declaration regarding its data security protocols and relevant insurance coverages
24 provided by ILYM Group, Inc. is filed with this Motion as Exhibit D. This is only an estimate, and final
25 pricing may vary depending on the issues, if any, that arise during the administration of the settlement.
26 However, the difference between the actual, lesser costs and \$20,000, if any, will be paid to the
27 Participating Class Members on a pro rata basis.

1 24. A copy of the Agreement and the entire Motion was submitted to the LWDA for review
2 at the same time the Motion was submitted to the Court pursuant to California Labor Code section
3 2699(l)(2). A true and correct copy of documents demonstrating the settlement documents were
4 provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as
5 Exhibit G.

6 25. A true and correct copy of the proposed Notice of Settlement is being filed with this
7 Motion as Exhibit F. To the extent preliminary and final approval are ultimately granted for the
8 proposed settlement, we will file a notice of entry of judgement regarding final approval which will be
9 available for Class Members to view on the Court's public portal webpage. The Notice of Settlement
10 will have information on how Class Members can access the public portal, so they will be aware of the
11 process and how to access the information after final approval.

12 26. The designated *cy pres* beneficiaries in this case are Capital Pro Bono, Inc. ("CPB") and
13 The Center For Workers Rights ("CFWR"). Only those funds that remain from uncashed settlement
14 checks will be sent to the *cy pres* beneficiaries pursuant to section 5.6 of the Agreement.

15 27. CPB is a 501(c)(3) nonprofit in good standing with the State of California that was
16 established in 1981 and incorporated in 1986 to provide free civil legal services to the indigent,
17 primarily through the use of volunteer attorneys. The formal service area includes Sacramento, Yolo,
18 San Joaquin, El Dorado and Placer counties, however it also regularly provides assistance, whether in
19 person or by phone, to individuals residing outside those counties, including Solano, Nevada, Merced,
20 Sutter, Yuba, and Stanislaus counties. CPB changed its name in 2020 from Voluntary Legal Services
21 Program of Northern California ("VLSP") to Capital Pro Bono, Inc. CPB has been the recipient of *cy*
22 *pres* funds from several jurisdictions in the State of California, including from Sacramento County
23 Superior Court.

24 28. If CPB is approved as a *cy pres* beneficiary, any funds received will be dedicated to the
25 Employment Law Clinic and Advice Line project, which assists the indigent with legal matters related to
26 their current or former employment. This assistance regularly includes, but is not limited to, free legal
27 advice regarding claims for unpaid wages, failure to provide meal and rest periods, failure to pay
28 reimbursement, and waiting time penalty claims. CPB provides legal advice, assistance with legal

1 forms, and direct representation in administrative hearings, including administrative hearings in front of
2 the California Labor Commissioner for unpaid wages. CPB has a staff attorney and clinic coordinator
3 who provide assistance, along with experienced employment law attorney volunteers. These services
4 have been a focus of the Employment Law Clinic and Advice Line project since its inception with VLSP
5 and continuing through today under CPB.

6 29. CFWR is also a qualified *cy pres* designee in class actions, under section 384, as it is a
7 501(c)(3) nonprofit in good standing with the State of California providing free civil legal services to the
8 indigent. Since its inception in 2014 and in partnership with Legal Aid at Work, the CFWR offers one-
9 on-one legal consultations for low-wage workers. The CFWR discusses employment issues with
10 workers and advises them as to the available legal remedies. In addition to individual counseling on
11 employment issues, the CFWR educates workers, unions, and community members about workplace
12 laws and remedies through “Know-Your-Rights” trainings conducted by the CFWR staff and volunteers.

13 30. The CFWR provides limited representation for low-wage workers in wage claims before
14 the California Labor Commissioner. The CFWR has provided services to low-wage workers in a variety
15 of industries across the entire state of California. CFWR primarily focuses on the enforcement of basic
16 workplace protections, including claims for unpaid wages, minimum wage violations, failure to pay
17 overtime, failure to pay reimbursement, waiting time penalties, and meal and rest period violations. The
18 CFWR helps workers navigate the wage claim process before the California Labor Commissioner
19 through advice given at its legal consultation clinics and/or, in some cases, through representing workers
20 in these claims. If the CFWR is approved as a *cy pres* beneficiary, the funds received will be dedicated
21 towards assisting low-wage workers with wage claims and enforcing the California Labor Code with
22 respect to those wage claims.

23 31. I believe the services provided by CPB and the CFWR promote the law consistent with
24 the objective of wage and hour class actions in general and in this case specifically.

25 32. I have spoken with every other attorney at my firm to determine whether they have any
26 relationship with either of the proposed *cy pres* beneficiaries.

27 33. I have volunteered for both organizations numerous times over the past several years,
28 either directly in the advice clinics or by presenting seminars on wage and hour laws for law students

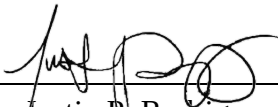
1 seeking to also volunteer at advice clinics. I have also volunteered by sitting on CPB's advisory
2 committee. These organizations are non-profits that assist low-income workers throughout California,
3 giving free legal advice regarding employment law issues and representing employees with wage claims
4 before the California Labor Commissioner. I have witnessed firsthand the quality service and attention
5 these entities provide to individuals in need of employment law advice and representation at the
6 California Labor Commissioner.

7 34. Brittany V. Berzin, my former associate, had never done any work, volunteer or
8 otherwise, with CPB. During law school, Ms. Berzin was a student volunteer for the CFWR for two
9 summers. Since graduating law school, she has volunteered for the CFWR approximately one to two
10 times per year, assisting in the advice clinic. Ms. Berzin had volunteered to be on the Board of Directors
11 and was the Chair, which is an unpaid position, at the time she left our firm. I am not aware of whether
12 she has continued in this role or taken on any other role for the CFWR. As Chair, Ms. Berzin was one
13 of seven Board Members, who were all from different law firms and/or local public and private
14 organizations. No compensation or benefits, monetary or otherwise, are provided to any Board Member
15 or organization a Board Member is associated with. The Executive Director of the CFWR supervises,
16 directs, and controls the day-to-day operations of the CFWR, not Ms. Berzin or the Board of Directors.
17 As Chair, Ms. Berzin's additional duties included scheduling meetings, drafting meeting agendas and
18 presiding over meetings. Furthermore, CFWR has not, and does not, provide any referrals to Shimoda
19 & Rodriguez Law, PC.

20 35. Galen T. Shimoda has volunteered for both organizations on and off over the past several
21 years through either presenting wage and hour seminars to law students who staff the free advice clinics
22 or helping at the advice clinics themselves. However, Mr. Shimoda has not performed any volunteer
23 work with either organization since approximately March 2020. Mr. Shimoda has never received
24 payment or compensation of any kind in connection with any work he's done with either of the proposed
25 *cy pres* beneficiaries. Renald Konini has never done any work, volunteer or otherwise with Capital Pro
26 Bono, Inc. or the Center For Workers' Rights. Neither my firm, myself, Mr. Konini, Ms. Berzin, nor
27 Mr. Shimoda have ever received any compensation, direct or indirect, for designating CFWR or CPB as
28

1 cy pres beneficiaries or in connection with any of the volunteer work we have done with the
2 organizations.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing is
4 true and correct. Executed on October 8, 2024, in Elk Grove, California.

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6 
7 _____
8 Justin R. Rodriguez
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1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Renald Konini (Cal. State Bar No. 312080)
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Facsimile: (916) 760-3733

5 Attorneys for Plaintiffs SALVADOR ESCOBAR CABRERA and JUAN ESCOBAR CABRERA
6 individually and on behalf of similarly situated employees

7
8 **SUPERIOR COURT OF CALIFORNIA**
9
10 **FOR THE COUNTY OF SACRAMENTO**

11 SALVADOR ESCOBAR CABRERA and
12 JUAN ESCOBAR CABRERA, individually
13 and on behalf of all other similarly situated
employees,

14 Plaintiffs,

15 vs.

16
17 MIKE MCCALL LANDSCAPE, INC., a
California Corporation; and DOES 1 to 100,
18 inclusive,

19 Defendants.

Case No. 23CV005083

*Assigned for All Purposes to Hon. Lauri A. Damrell
Department 22*

CLASS ACTION

**DECLARATION OF JUAN ESCOBAR
CABRERA IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT**

Reservation No. A-05083-001

Date: November 1, 2024

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: July 20, 2023

FAC Filed: November 20, 2023

Trial Date: None Set

1 I, Juan Escobar Cabrera, declare:

2 1. I am a competent adult, I have personal knowledge of the facts set forth in this
3 declaration, and I am making this declaration on behalf of myself, as a named plaintiff, and in support
4 of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement.

5 2. I worked for Defendant Mike McCall Landscape, Inc. ("Defendant") as a non-exempt
6 employee. I was subject to all of Defendant's policies and practices that have been alleged as unlawful
7 in the Complaint and the notice sent to the Labor and Workforce Development Agency, including the
8 following: failure to pay overtime, failure to pay minimum wages, failure to provide accurate wage
9 statements, failure to timely pay final wages, failure to provide meal and rest periods or pay premiums
10 in lieu thereof, failure to pay prevailing wages, and failure to pay reimbursement for expenses.

11 3. I have actively participated in the litigation of this case for the benefit of all Class
12 Members. Prior to obtaining an attorney, I researched different potential attorneys to bring the claims,
13 trying to one I thought had the right experience and who would do a good job. I also researched the
14 claims we were going to bring, so I could make sure I discuss the relevant issues and give all the right
15 information to help. This was also to help me have a better idea of what to expect in litigation and how
16 to help the case proceed. After securing Shimoda & Rodriguez Law, PC, I continued to be actively
17 involved in the case to help ensure a positive outcome.

18 4. My attorneys explained to me the risks and benefits of bringing a class action and a
19 claim under the Private Attorneys General Act ("PAGA"). I understood that pursuing the case as a
20 class and PAGA action meant that it would take substantially longer than pursuing my claims
21 individually, whether in Court or with the California Labor Commissioner, and that I risked getting
22 nothing in the end, but I believed it was important to make sure that Defendant followed the law for
23 everyone. I understood that I took on the risk, both professionally and financially, in pursuing the case
24 as a class and PAGA action rather than pursuing my claims individually, including the risk of having to
25 pay Defendant's costs if we were unsuccessful in bringing our claims.

26 5. During the course of this litigation, I have given detailed accounts of all the facts related
27 to my employment. I provided my attorneys with extensive documentation that I believe supported the
28 claims brought against Defendant. I met with and assisted my attorneys in understanding these

1 documents and providing context for Defendant's payroll process as it applied to me and how I
2 believed it applied to Defendant's other employees. I worked at multiple job sites with multiple
3 different forms, so I was able to discuss the similarities of the wage and hour policies and practices
4 among all Class Members.

5 6. The work I performed for this case included an extensive review of documents and
6 payroll practices to show and explain to my attorneys what was happening and why I thought it was
7 unlawful. I provided my attorneys with paystubs, and information regarding policies and practices,
8 related to the wage and hour claims of this case. I also explained the job duties of the various positions
9 held by class members, the type of tasks and work performed, how these raised wage and hour issues,
10 estimates of the total number of class members for each position, typical schedules, the different types
11 and layouts of jobsites, and the policies of the Defendant and how they affected myself and class
12 members. I helped review and explain to my attorney's different documents such as payroll
13 documents, paystubs and payroll records, payroll policies, meal and rest period policies, traveling to job
14 sites policies, timecards, and Defendants' practices of such policies. I reviewed prevailing wages
15 jobsite information with my attorneys to help assess claims by Defendants about whether and how
16 often any prevailing wage jobs were being worked, so we could compare the actual pay records with
17 prevailing wage determinations. I also helped find potential witnesses, so my attorneys could interview
18 them about the claims. I believe this was very important as it helped not only the claims of failure to
19 pay minimum wages, failure to pay overtime, and failure to provide meal and rest periods, failure to
20 pay prevailing wages, failing to pay reimbursement for the use of personal cell phones and payment of
21 tolls, but also claims related to waiting time penalties and failure to provide accurate wage statements.
22 The review became even more detailed when my attorneys asked me questions about the payroll data
23 sample that was produced as part of informal discovery to engage in mediation.

24 7. I participated in the negotiations and settlement discussions in this case, including
25 participating in mediation by phone, speaking with my attorneys to answer questions, provide any
26 additional information needed to assist the negotiations, and discussing the potential terms of the
27 Agreement to evaluate its adequacy. Throughout the course of this litigation, I have asked questions
28

1 when I needed clarification about various aspects of this case to make sure there were continually steps
2 taken to advance the interests of Class Members.

3 8. Although I have already spent a substantial amount of time on this case and assisting my
4 attorneys, I expect the amount of time I spend on this case will increase if preliminary approval is
5 granted because Class Members will likely reach out to me about the Settlement and the process for
6 receiving payment. To date, I estimate that I have spent approximately 80-85 hours helping my
7 attorneys in this case.

8 9. I have not received any benefits as a result of filing this lawsuit. I have, however,
9 experienced substantial burdens as a result of filing the lawsuit that other Class Members were not
10 subject to. For example, in bringing the lawsuit, I assumed the risk of having to pay Defendant's costs
11 if the Court or jury rules against us on the claims. My understanding is that this is a substantial risk
12 because the costs associated with litigation, in general, are very high and this cost is multiplied many
13 times over in complex litigation like class actions. I have spent a substantial amount of time in this
14 case, securing a monetary benefit for many individuals who have not had to do anything whatsoever to
15 have the opportunity to receive it. I have been employed full/part-time during the majority of the time
16 this case has been pending. As a result, the time I have spent on this case has to occur during my lunch
17 and/or breaks times, after hours, and on my days off. This is particularly challenging because I have
18 small children. Rather than spend this time with friends and family, I have spent this time for the
19 benefit of Class Members. Also, I have experienced stress as a result of this litigation. Additionally, I
20 feel that I have lost employment opportunities because of this lawsuit. Finally, as part of the
21 Settlement, Salvador Escobar Cabrera and I are the only individuals providing a general release of all
22 my individual claims and waiving the protections of California Civil Code section 1542 for unknown
23 claims. No other Class Member is subject to such a broad release.

24 10. I have reviewed the final Joint Stipulation of Class Action and PAGA Settlement and
25 Release, discussed the terms with my attorney, and asked my attorney any questions I had. I believe
26 the terms of the Settlement and allocations are fair and reasonable given the facts of the case.
27
28

11. I understand that any Class Representative Enhancement Payment I may receive is for my participation as a Class Representative and it is not contingent on my support or approval of the Agreement.

12. I have no interest in the designated *cy pres* beneficiaries, Capital Pro Bono, Inc., and the Center for Workers Rights, whether financial, in their governance, or otherwise.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 3, 2024, in Elk Grove, California.

JUAN ESCOBAR C-

Juan Escobar Cabrera

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Renald Konini (Cal. State Bar No. 312080)
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Facsimile: (916) 760-3733

5 Attorneys for Plaintiffs SALVADOR ESCOBAR CABRERA and JUAN ESCOBAR CABRERA
6 individually and on behalf of similarly situated employees

7
8 **SUPERIOR COURT OF CALIFORNIA**
9
10 **FOR THE COUNTY OF SACRAMENTO**

11 SALVADOR ESCOBAR CABRERA and
12 JUAN ESCOBAR CABRERA, individually
13 and on behalf of all other similarly situated
employees,

14 Plaintiffs,

15 vs.

16
17 MIKE MCCALL LANDSCAPE, INC., a
California Corporation; and DOES 1 to 100,
18 inclusive,

19 Defendants.
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Case No. 23CV005083

*Assigned for All Purposes to Hon. Lauri A. Damrell
Department 22*

CLASS ACTION

**DECLARATION OF SALVADOR ESCOBAR
CABRERA IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT**

Reservation No. A-05083-001

Date: November 1, 2024

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: July 20, 2023

FAC Filed: November 20, 2023

Trial Date: None Set

1 I, Salvador Escobar Cabrera, declare:

2 1. I am a competent adult, I have personal knowledge of the facts set forth in this
3 declaration, and I am making this declaration on behalf of myself, as a named plaintiff, and in support
4 of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement.

5 2. I worked for Defendant Mike McCall Landscape, Inc. ("Defendant") as a non-exempt
6 employee. I was subject to all of Defendant's policies and practices that have been alleged as unlawful
7 in the Complaint and the notice sent to the Labor and Workforce Development Agency, including the
8 following: failure to pay overtime, failure to pay minimum wages, failure to provide accurate wage
9 statements, failure to timely pay final wages, failure to provide meal and rest periods or pay premiums
10 in lieu thereof, failure to pay prevailing wages, and failure to pay reimbursement for expenses.

11 3. I have actively participated in the litigation of this case for the benefit of all Class
12 Members. Prior to obtaining an attorney, I spent a long time looking up different attorneys I thought
13 would be good for handling the claims. I also performed research on the potential claims, so I could be
14 sure I could have an informed discussion with the attorneys about the claims and have a better idea of
15 what to expect in litigation and how to help the case proceed. After securing Shimoda & Rodriguez
16 Law, PC, I continued to be actively involved in the case to help ensure a positive outcome.

17 4. My attorneys explained to me the risks and benefits of bringing a class action and a
18 claim under the Private Attorneys General Act ("PAGA"). I understood that pursuing the case as a
19 class and PAGA action meant that it would take substantially longer than pursuing my claims
20 individually, whether in Court or with the California Labor Commissioner, and that I risked getting
21 nothing in the end, but I believed it was important to make sure that Defendant followed the law for
22 everyone. I understood that I took on the risk, both professionally and financially, in pursuing the case
23 as a class and PAGA action rather than pursuing my claims individually, including the risk of having to
24 pay Defendant's costs if we were unsuccessful in bringing our claims.

25 5. During the course of this litigation, I have given detailed accounts of all the facts related
26 to my employment. I provided my attorneys with extensive documentation that I believe supported the
27 claims brought against Defendant. I met with and assisted my attorneys in understanding these
28 documents and providing context for Defendant's payroll process as it applied to me and how I

1 believed it applied to Defendant's other employees. I worked at multiple job sites with multiple
2 different foremen, so I was able to discuss the similarities of the wage and hour policies and practices
3 among all Class Members.

4 6. The work I performed for this case included an extensive review of documents and
5 payroll practices to show and explain to my attorneys what was happening and why I thought it was
6 unlawful. I provided my attorneys with information regarding paystubs, policies, related to the wage
7 and hour claims of this case. I also explained the job duties of the various positions held by class
8 members, the type of tasks and work performed, how these raised wage and hour issues, estimates of
9 the total number of class members for each position, typical schedules, the different types and layouts
10 of jobsites, and the policies of the Defendant and how they affected myself and class members. I
11 helped review and explain to my attorney's different documents such as payroll documents, paystubs
12 and payroll records, payroll policies, meal and rest period policies, timecards, and Defendants' practices
13 of such policies. I reviewed prevailing wages jobsite information with my attorneys to help assess
14 claims by Defendants about whether and how often any prevailing wage jobs were being worked, so we
15 could compare the actual pay records with prevailing wage determinations. I also helped find potential
16 witnesses, so my attorneys could interview them about the claims. I believe this was very important as
17 it helped not only the claims of failure to pay minimum wages, failure to pay overtime, and failure to
18 provide meal and rest periods, failure to pay prevailing wages, failing to pay reimbursement for the use
19 of personal cell phones and payment of tolls, but also claims related to waiting time penalties and
20 failure to provide accurate wage statements. The review became even more detailed when my
21 attorneys asked me questions about the payroll data sample that was produced as part of informal
22 discovery to engage in mediation.

23 7. I participated in the negotiations and settlement discussions in this case, including
24 participating in mediation by phone, speaking with my attorneys to answer questions, provide any
25 additional information needed to assist the negotiations, and discussing the potential terms of the
26 Agreement to evaluate its adequacy. Throughout the course of this litigation, I have asked questions
27 when I needed clarification about various aspects of this case to make sure there were continually steps
28 taken to advance the interests of Class Members.

1 8. Although I have already spent a substantial amount of time on this case and assisting my
2 attorneys, I expect the amount of time I spend on this case will increase if preliminary approval is
3 granted because Class Members will likely reach out to me about the Settlement and the process for
4 receiving payment. To date, I estimate that I have spent approximately 80-90 hours helping my
5 attorneys in this case.

6 9. I have not received any benefits as a result of filing this lawsuit. I have, however,
7 experienced substantial burdens as a result of filing the lawsuit that other Class Members were not
8 subject to. For example, in bringing the lawsuit, I assumed the risk of having to pay Defendant's costs
9 if the Court or jury rules against us on the claims. My understanding is that this is a substantial risk
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11 times over in complex litigation like class actions. I have spent a substantial amount of time in this
12 case, securing a monetary benefit for many individuals who have not had to do anything whatsoever to
13 have the opportunity to receive it. I have been employed full time during the majority of the time this
14 case has been pending. As a result, the time I have spent on this case has to occur during my lunch
15 and/or breaks times, after hours, and on my days off. This is particularly challenging because I have
16 small children that I pick up from school and that I take care off. Rather than spend this time with
17 friends and family, I have spent this time for the benefit of Class Members. I have also experienced
18 stress because of litigation in this case. Additionally, I feel that I have lost employment opportunities
19 as a result of this case. Finally, as part of the Settlement, Juan Escobar Cabrera and I are the only
20 individuals providing a general release of all my individual claims and waiving the protections of
21 California Civil Code section 1542 for unknown claims. No other Class Member is subject to such a
22 broad release.

23 10. I have reviewed the final Joint Stipulation of Class Action and PAGA Settlement and
24 Release, discussed the terms with my attorney, and asked my attorney any questions I had. I believe
25 the terms of the Settlement and allocations are fair and reasonable given the facts of the case.

26 11. I understand that any Class Representative Enhancement Payment I may receive is for
27 my participation as a Class Representative and it is not contingent on my support or approval of the
28 Agreement.

12. I have no interest in the designated *cy pres* beneficiaries, Capital Pro Bono, Inc., and the Center for Workers Rights, whether financial, in their governance, or otherwise.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 3, 2024, in Elk Gove, California.

Salvador Escobar C

Salvador Escobar Cabrera

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
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Attorneys for Plaintiffs SALVADOR ESCOBAR CABRERA and JUAN ESCOBAR CABRERA
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

SALVADOR ESCOBAR CABRERA and
JUAN ESCOBAR CABRERA, individually
and on behalf of all other similarly situated
employees,

Plaintiffs,

vs.

MIKE MCCALL LANDSCAPE, INC., a
California Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 23CV005083

*Assigned for All Purposes to Hon. Lauri A. Damrell
Department 22*

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Reservation No. A-05083-001

Date: November 1, 2024

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: July 20, 2023

FAC Filed: November 20, 2023

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation Regarding Class Action and PAGA Settlement and Release
B	Plaintiffs' Operative Complaint
C	Plaintiffs' Letter to the LWDA Regarding PAGA Claims
D	ILYM Group, Inc., Bid
E	Plaintiffs' Itemized Costs
F	Proposed Notice of Settlement
G	Proof of Submission of Proposed Settlement Agreement to LWDA

Dated: October 8, 2024

Shimoda & Rodriguez Law, PC

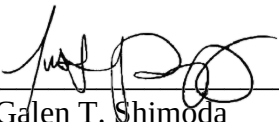
By: 
 Galen T. Shimoda
 Justin P. Rodriguez
 Renald Konini
 Attorneys for Plaintiffs

Exhibit A

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5 Attorneys for Plaintiffs SALVADOR ESCOBAR CABRERA
6 and JUÁN ESCOBAR CABRERA individually
and on behalf of similarly situated employees

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8 Jason J. Granskog
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Facsimile: (925) 935-0371

11 Attorneys for MIKE MCCALL LANDSCAPE, INC.,

12 **SUPERIOR COURT OF CALIFORNIA**
13 **FOR THE COUNTY OF SACRAMENTO**
14

15 SALVADOR ESCOBAR CABRERA and
16 JUAN ESCOBAR CABRERA, individually
and on behalf of all other similarly situated
17 employees,

18 Plaintiffs,

19 vs.

20 MIKE MCCALL LANDSCAPE, INC., a
California Corporation; and DOES 1 to 100,
21 inclusive,

22 Defendant.
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Case No.: 23CV005083

**JOINT STIPULATION REGARDING CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

Filed: July 20, 2023

FAC Filed: November 20, 2023

Trial Date: None Set

1 This Joint Stipulation Regarding Class Action and PAGA Settlement and Release is made and
2 entered into between the Plaintiffs Salvador Escobar Cabrera and Juan Escobar Cabrera (“Plaintiffs”), on
3 behalf of themselves, the Labor and Workforce Development Agency, Class Members, and Aggrieved
4 Employees, and Defendant Mike McCall Landscape, Inc. (“Defendant”). This Agreement is subject to the
5 terms and conditions set forth below and the approval of the Court.

6 **1. DEFINITIONS**

7 The following terms, when used in this Agreement, have the following meanings:

8 1.1 “Action” means the above stated lawsuit, *Salvador Escobar Cabrera, et al. v. Mike McCall*
9 *Landscape, Inc.*, Sacramento County Superior Court, Case No. 23CV005083, filed July 20, 2023.

10 1.2 “Aggrieved Employee(s)” means all non-exempt employees who have, or continue to, work
11 for Defendants in California from July 18, 2022, up to either (1) the Preliminary Approval Date, or (2) 60
12 days after this Agreement is signed, whichever is earlier.

13 1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Joint Stipulation
14 Regarding Class Action and PAGA Settlement and Release.

15 1.4 “Class Counsel” means Galen T. Shimoda, Justin P. Rodriguez, and Renald Konini of
16 Shimoda & Rodriguez Law, PC.

17 1.5 “Class Member(s)” means all individuals who have, or continue to, work for Defendants in
18 California as non-exempt employees from July 20, 2019, up to either (1) the Preliminary Approval Date, or
19 (2) sixty (60) days after this Agreement is signed, whichever is earlier.

20 1.6 “Class Period” means July 20, 2019, up to either (1) the Preliminary Approval Date, or (2)
21 sixty (60) days after this Agreement is signed, whichever is earlier.

22 1.7 “Class Representatives” means Plaintiffs Salvador Escobar Cabrera and Juan Escobar
23 Cabrera.

24 1.8 “Class Representatives’ Released Claims” means all claims arising from, could have been
25 asserted, or related in any way to the Class Representatives’ employment with Defendant, under federal,
26 state, or local laws, and/or ordinances, or tort or contract theories, whether known or unknown, and whether
27 anticipated or unanticipated, including without limitation statutory, constitutional, contractual or common
28 law claims for lost wages, unpaid wages, emotional distress, punitive damages, special damages, damages,

1 unpaid costs, penalties, liquidated damages, interest, attorneys' fees, litigation costs, restitution, equitable
2 relief or other similar relief or claims along with a waiver of any rights set forth in California Civil Code
3 section 1542. This release includes a waiver of the protections found in California Civil Code section 1542,
4 which states:

5 **A general release does not extend to claims that the creditor or releasing**
6 **party does not know or suspect to exist in his or her favor at the time of**
7 **executing the release and that if known by him or her, would have**
8 **materially affected his or her settlement with the debtor or released**
9 **party.**

10 The Class Representatives' Released Claims exclude claims for workers' compensation,
11 unemployment insurance benefits, or other claims that cannot be released as a matter of law.

12 1.9 "Complaint" means the operative Complaint on file in the Action with the Court.

13 1.10 "Court" means the Sacramento County Superior Court.

14 1.11 "Defendant" means Mike McCall Landscape, Inc.

15 1.12 "Defendant's Counsel" means Richard T. Bowles and Jason J. Granskog of Bowles &
16 Verna LLP.

17 1.13 "Enhancement Payment" means the amount approved by the Court to be paid to the Class
18 Representatives in recognition of the time and effort expended on behalf of Class Members for the benefit
19 of Class Members, which is in addition to any Individual Settlement Amount paid to the Class
20 Representatives as a Participating Class Member.

21 1.14 "Effective Date" means the Final Approval Date unless there is a timely objection lodged
22 that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day
23 after a signed order approving this settlement has been filed provided no appellate proceeding having been
24 filed; or (b) seventh (7th) calendar day after any appellate proceeding opposing the settlement has been
25 finally dismissed with no material change to the terms of this settlement and there is no right to pursue
26 further remedies or relief, whichever is later.

27 1.15 "Final Approval Date" means the date a signed order granting final approval of this
28 Agreement is filed with the Court.

1 1.16 “Gross Settlement Amount” is the sum of Six Hundred Eighty-Five Thousand Dollars
2 (\$685,000).

3 1.17 “Individual Settlement Amount” means an individual Class Member’s and Aggrieved
4 Employee’s allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in
5 Sections 1.19, 1.23, 5.5, and 5.8.

6 1.18 “LWDA” means the California Labor and Workforce Development Agency.

7 1.19 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for
8 distribution to Class Members, as described in this Agreement, after deduction of Class Counsel’s
9 attorneys’ fees and litigation costs, Settlement Administrator Costs, the PAGA Payment, and Enhancement
10 Payment to the Class Representatives.

11 1.20 “Notice of Settlement” means the document substantially in the form attached hereto as
12 Exhibit 1.

13 1.21 “Notice Period” means sixty (60) calendar days from the initial mailing of the Notice of
14 Settlement to Class Members and Aggrieved Employees.

15 1.22 “PAGA” means Private Attorneys General Act.

16 1.23 “PAGA Payment” means the amount allocated from the Gross Settlement Amount towards
17 resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

18 1.24 “PAGA Claim Period” means July 18, 2022, up to either (1) the Preliminary Approval Date
19 or (2) sixty (60) days after this Agreement is signed, whichever is earlier.

20 1.25 “Parties” mean Defendant and Plaintiffs.

21 1.26 “Participating Class Member” means any and all Class Members who have not made any
22 timely request to opt-out of the Agreement.

23 1.27 “Preliminary Approval Date” means the date a signed order granting preliminary approval
24 of this Agreement is filed with the Court.

25 1.28 “QSF” means a Qualified Settlement Fund set up by the Settlement Administrator for the
26 benefit of the Participating Class Members and/or Aggrieved Employees and from which the payments
27 under this Agreement shall be made. Any amounts Defendant has agreed to pay under this Agreement shall
28 remain the property of Defendant until the payments required under the Agreement are made.

1 1.29 “Qualifying Workweeks” are weeks worked by Class Members and/or Aggrieved
2 Employees during the Class Period and/or PAGA Claim Period, respectively, in California. For Class
3 Members, workweeks shall be defined as the total length of service (in days) in California during the Class
4 Period divided by seven. For Aggrieved Employees workweeks shall be defined as the total length of
5 service (in days) in California during the PAGA Claim Period divided by seven. The calculation of a Class
6 Member’s and/or Aggrieved Employee’s workweeks and a determination as to whether a Class Member
7 and/or Aggrieved Employee was actively employed in California in a particular workweek shall be
8 construed from Defendant’s records.

9 1.30 “Released Class Claims” means any and all class claims that are alleged in the Complaint,
10 and any additional wage and hour claims that could have been brought based on the facts alleged in the
11 Complaint, through the Class Period. This release excludes the release of claims not permitted by law.
12 The Released Class Claims exclude claims for workers’ compensation or unemployment insurance
13 benefits. This release will cover all Class Members who do not opt out.

14 1.31 “Released PAGA Claims” means any and all claims that were brought under the Private
15 Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in Plaintiffs’ notice letter to the LWDA and
16 any additional wage and hour PAGA claims that could have been brought based on the facts alleged in
17 Plaintiffs’ notice letter to the LWDA during the PAGA Claim Period. Aggrieved Employees cannot opt
18 out of this waiver of claims.

19 1.32 “Released Parties” means Defendant, as well as Defendant’s officers, shareholders,
20 directors, agents, employees, attorneys, and insurers.

21 1.33 “Settlement Administrator” means and refers to ILYM Group, Inc., the third-party entity
22 that will administer the Agreement as outlined in Sections 4 and 7, or any other third-party administrator
23 agreed to by the Parties and approved by the Court for the purposes of administering this Agreement. The
24 Parties each represent that they do not have any financial interest in the Settlement Administrator.

25 1.34 “Settlement Administrator Costs” means the fees and expenses reasonably incurred by the
26 Settlement Administrator as a result of the procedures and processes expressly required by this Agreement,
27 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
28 preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees

1 associated with preparing, issuing and mailing any and all notices and other correspondence to Class
2 Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class
3 Members and/or Aggrieved Employees, Class Counsel, and Defendant's Counsel; all costs and fees
4 associated with computing, processing, reviewing, and paying the Individual Settlement Amounts, and
5 resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any,
6 making related payment to federal and state tax authorities, if any, and issuing tax forms relating to
7 payments made under the Agreement; all costs and fees associated with preparing any tax returns and any
8 other filings required by any governmental taxing authority or agency; all costs and fees associated with
9 preparing any other notices, reports, or filings to be prepared in the course of administering Individual
10 Settlement Amounts; and any other costs and fees incurred and/or charged by the Settlement Administrator
11 in connection with the execution of its duties under this Agreement.

12 **2. DESCRIPTION OF THE LITIGATION**

13 2.1 On or about July 18, 2023, Plaintiffs sent notice to the LWDA to exhaust administrative
14 remedies under the PAGA for (1) Failure to Pay Overtime Wages, (2) Failure to Pay Minimum Wages, (3)
15 Failure to Pay Prevailing Wages, (4) Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof,
16 (5) Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof, (6) Failure to Provide Accurate Wage
17 statements, (7) Failure to Pay Final Wages, (8) Failure to Pay Reimbursement for Expenses, (9) Violation
18 of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare
19 Commission Order), (10) Failure To Maintain Accurate Wage Records, and (11) Failure to Provide Paid
20 Sick Leave. The LWDA did not respond to the notice within the statutorily required time frame and, as
21 such, Plaintiffs became authorized to act as a Private Attorneys General on all alleged PAGA claims.

22 2.2 On or about July 20, 2023, Plaintiffs filed a class action Complaint in Sacramento County
23 Superior Court on behalf of themselves and Class Members alleging claims for (1) Failure to Pay Overtime
24 Wages, (2) Failure to Pay Minimum Wages, (3) Failure to Provide Meal Periods or Pay Premiums in Lieu
25 Thereof, (4) Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof, (5) Failure to Provide
26 Accurate Wage statements, (6) Failure to Pay Final Wages, (7) Failure to Pay Reimbursement for Expenses,
27 (8) Failure to Pay Prevailing Wages, and (9) engaging in Unfair Competition. Plaintiffs filed a First
28 Amended Complaint on approximately November 20, 2023, to add a PAGA cause of action based on the

violations alleged in the July 18, 2023, notice to the LWDA on behalf of themselves and Aggrieved Employees.

2.3 Through informal discovery, Defendant and Defendant's Counsel provided Class Counsel with copies of all applicable versions of its policies and procedures, employee handbooks, information on Class Members including, but not limited to, Class Members' workweeks, dates of employment, total number of Class Members, their rates of pay, and pay periods as well as timecard data and payroll reports for a randomly selected sample of Class Members.

2.4 After Class Counsel received the data, the Parties engaged in informal settlement negotiations, but were not able to come to a resolution. On May 24, 2024, the Parties participated in a lengthy mediation with private mediator Russ J. Wunderli, Esq. At the conclusion of the mediation, the Parties were able to come to a resolution. At all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.

2.5 Discussions between Plaintiffs and Class Counsel, between counsel for the Parties, document productions, extensive legal analysis, the provision of information by Defendant to Plaintiffs and the detailed analysis of the records, including expert analysis, have permitted each side to assess the relative merits of the claims and the defenses to those claims.

2.6 In the Action, Plaintiffs contends that Defendant violated California law by 1) failing to pay for all hours worked as a result of Defendant's failure to accurately record all hours worked, 2) deducting time from employees' hours worked, including deducting forty-five (45) minutes for meal periods that were shorter or not received, 3) failing to correctly calculate employees' regular rates of pay when they earned different rates of pay in the same week, 4) failing to authorize and permit all meal and rest periods, 5) failing to keep accurate records of employee's hours worked, including start and stop times for any meal periods, and 6) failing to pay all business expenses incurred, including mileage and personal cellphone expenses. Defendant has denied each of Plaintiffs' claims and Defendant has denied that this Action is appropriate for class certification for anything other than settlement purposes. The agreed upon Gross Settlement Amount was reached after evaluating the Parties' theories of potential exposure for the underlying claims and the class data supporting these claims. The Parties, with the assistance of the

mediator, also assessed appropriate discounts to the potential liability based on Defendant's factual and legal contentions and defenses.

2.7 The Parties agree that the above-described investigation and evaluation, as well as discovery and the information exchanged to date, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiffs', Class Counsel, Defendant, and Defendant's Counsel have concluded that it is desirable that the Action be settled in a manner and upon such terms and conditions set forth herein in order to avoid further expense, inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action. Plaintiffs, Class Counsel, Defendant, and Defendant's Counsel are of the opinion that the Agreement for the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and circumstances.

3. THE CONDITIONAL NATURE OF THIS AGREEMENT

3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a conditional basis. If the Effective Date does not occur, or if the Court's approval of the settlement is reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

3.2 Defendant has denied all claims as to liability, damages, liquidated damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant has agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or the Effective Date does not occur, Defendant does not waive, but rather expressly reserve, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including,

without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

4. SCOPE OF THE CLASS

4.1 The scope of the class of individuals encompassed under the Agreement and subject to all obligations and duties required under the Agreement, shall include all Class Members as defined in Section 1.5 and all Aggrieved Employees as defined in Section 1.2. However, it shall not include any Class Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in Section 7.5.1.

4.2 Only Participating Class Members and Aggrieved Employees are entitled to recover under this Agreement.

4.3 Any person who believes that he or she is a Class Member or Aggrieved Employee and wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name did not appear on the class list provided to the Settlement Administrator prior to mailing, may submit a data request to the Settlement Administrator. The data request must contain all of the following information: (a) the full name and, if applicable, Social Security Number of the individual making the request; (b) the name used by such employee as of the time his or her employment with Defendant ended; (c) the individual's dates of employment with Defendant; and (d) a return address to which a response may be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or otherwise submitted to the Settlement Administrator such that it is received before the conclusion of the Notice Period. Upon receipt of any data requests, the Settlement Administrator shall promptly (in no event more than two business days) transmit the data requests to Defendant's Counsel and request that Defendant review its records.

4.4 If Defendant agrees that the person listed in a data request is a Class Member and/or Aggrieved Employee, the Settlement Administrator shall promptly mail a Notice of Settlement to the person who submitted the data request, at the address designated for that purpose in the data request. All provisions of this Agreement relating to the Notice of Settlement shall apply to Notice of Settlements sent in response to data requests, and any person who submits a data request and is sent a Notice of Settlement

in response shall be treated by the Settlement Administrator as a Class Member and/or Aggrieved Employee for all other purposes.

4.5 If Defendant does not agree that the person listed in a data request is a Class Member and/or Aggrieved Employee, Defendant's Counsel and Class Counsel shall attempt to resolve any such dispute in good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request dispute. Defendant's records shall control unless the individual submitting the data request provides persuasive evidence to doubt the accuracy of those records. Each data request dispute that Defendant's Counsel and Class Counsel cannot timely resolve shall be resolved by the Settlement Administrator. The Settlement Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve the dispute. The Settlement Administrator must resolve any dispute submitted to it within seven (7) calendar days after Defendant's Counsel and Class Counsel submit the dispute to the Settlement Administrator. The decision by the Settlement Administrator shall be final as between the parties, subject to Court review.

5. TERMS OF THE SETTLEMENT

The Parties agree as follows:

5.1 Gross Settlement Amount: In consideration and exchange for the releases described in Section 6, Defendant shall pay the Gross Settlement Amount (\$685,000). Funding of the Gross Settlement Amount shall occur within 21 calendar days after the Effective Date to be held in trust in a QSF by the Settlement Administrator. The Gross Settlement Amount includes payments to Participating Class Members, Aggrieved Employees, all attorneys' fees, costs and litigation expenses related to the Action incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering the Agreement (including Settlement Administrator Costs), and obtaining final approval of the Agreement, the Enhancement Payment to the Class Representatives and the PAGA Payment. Any monies necessary to satisfy Defendant's tax obligations (*e.g.* employer FICA, FUTA and SDI contributions on wage payments) on any monies distributed to Participating Class Members will be paid in addition to the Gross Settlement Amount.

5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of 35% of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendant has

1 agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the 35%
2 threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not to
3 exceed \$10,000, which shall be paid from the Gross Settlement Amount. Defendant has agreed to not
4 oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as they do not
5 exceed the \$10,000 threshold. The Settlement Administrator will issue Class Counsel an IRS Form 1099
6 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards less than
7 the requested attorney's fees and/or costs, the portion of the requested amounts not awarded to Class
8 Counsel shall be added to the Net Settlement Amount to be distributed to Participating Class Members on
9 a pro rata basis.

10 5.3 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from the
11 Gross Settlement Amount and shall not exceed \$20,000. The difference between any actual costs and the
12 allocated \$20,000 shall be added to the Net Settlement Amount to be distributed to Participating Class
13 Members on a pro rata basis.

14 5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiffs, shall apply to the Court for
15 an Enhancement Payment to each of the Class Representatives in an amount not to exceed Ten Thousand
16 (\$10,000) each, to compensate for the risks, time, and expense of their involvement in the Action and
17 securing the benefits of this Agreement for Class Members. The Enhancement Payment is in addition to
18 the Individual Settlement Amount Plaintiffs would otherwise be due under the Agreement as a Participating
19 Class Member. Defendant has agreed to not oppose Class Counsel's request for an Enhancement Payment
20 to Plaintiffs so long as it does not exceed the amount stated herein. The Enhancement Payment will be
21 designated as a non-wage payment and reported on an IRS Form 1099-MISC. In the event that the Court
22 awards less than the Enhancement Payment amount requested, then any portion of the requested amount
23 not awarded to the Class Representatives shall be added to the Net Settlement Amount to be distributed to
24 Participating Class Members on a pro rata basis.

25 5.5 PAGA Payment: Forty Thousand (\$40,000), of the Gross Settlement Amount shall be
26 allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be
27 paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees on a pro rata
28 basis as described below in Section 5.8. Any amount not approved by the Court for the allocated PAGA

1 Payment shall be added to the Net Settlement Amount to be distributed to Participating Class Members on
2 a pro rata basis.

3 5.6 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or PAGA
4 Payment allocated to Participating Class Members and/or Aggrieved Employees that were not claimed by
5 cashing their respective settlement checks before the deadline to do so, that remaining amount shall be
6 donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights under the doctrine
7 of *cy pres*. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

8 5.7 No Additional Benefits Contributions: All Individual Settlement Amounts paid to
9 Participating Class Members and Aggrieved Employees shall be deemed to be income solely in the year in
10 which such amounts were actually received. It is expressly understood and agreed that the receipt of such
11 Individual Settlement Amounts will not entitle any Participating Class Member or Aggrieved Employee to
12 any new or additional compensation or benefits under any company bonus or other compensation or benefit
13 plan or agreement in place during the period covered by the Agreement, nor will it entitle any Participating
14 Class Member Aggrieved Employee to any increased retirement, 401(k) and/or 403(b) benefits or matching
15 benefits, or deferred compensation benefits. It is the intent of this Agreement that the Individual Settlement
16 Amounts provided for in this Agreement are the sole payments to be made by Defendant to the Participating
17 Class Members and Aggrieved Employees in connection with this Agreement (notwithstanding any
18 contrary language or agreement in any benefit or compensation plan document that might have been in
19 effect during the period covered by this Agreement).

20 5.8 Pro Rata Distribution Formula: Payment to Participating Class Members and Aggrieved
21 Employees of their Individual Settlement Amount will not require the submission of a claim form. A Net
22 Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for
23 approved attorneys' fees and costs, any Enhancement Payment to the Class Representatives, the Settlement
24 Administrator Costs, and the PAGA Payment. Each Class Member's share will be initially determined by
25 dividing their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks of
26 all Class Members. That fraction will then be multiplied by the Net Settlement Amount to arrive at the
27 Class Member's individual share of the Net Settlement Amount. Any funds allocated to Class Members
28 under this formula who timely opt out of the Settlement will be redistributed to Participating Class

Members on a pro rata basis, *i.e.* each Participating Class Member's share will be determined by dividing their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks of all Participating Class Members and that fraction will then be multiplied by the Net Settlement Amount to arrive at the Participating Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total Qualifying Workweeks within the PAGA Claim Period by the total Qualifying Workweeks by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share.

5.9 Tax Allocation: The Parties recognize that the Individual Settlement Amounts to be paid to Participating Class Members and/or Aggrieved Employees reflect a settlement of a dispute over claimed penalties and wages. The Settlement Administrator shall calculate the employer's share of payroll taxes on the amounts paid to Participating Class Members as wages as well as calculating all required withholdings and deductions from said wage payments. The characterization of Individual Settlement Amounts to Participating Class Members and Aggrieved Employees are as follows:

5.9.1 Twenty percent (20%) of each Participating Class Members' share of the Net Settlement Amount shall be allocated for payment of disputed wages and shall be subject to required employer taxes. Participating Class Members shall receive an IRS Form W-2 for reporting of this portion of their Individual Settlement Amount.

5.9.2 Eighty percent (80%) of each Participating Class Members' share of the Net Settlement Amount shall be allocated for disputed statutory penalties and interest, and no amount shall be deducted for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for which the Participating Class Members shall receive IRS Forms 1099-MISC and 1099-INT and this payment shall be divided equally among the 1099-MISC and 1099-INT designations.

5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for which the Aggrieved Employees shall receive an IRS Form 1099-MISC.

1 5.10 Participating Class Members and Aggrieved Employees shall be solely responsible for the
2 reporting and payment of their share of any federal, state and/or municipal income or other taxes on
3 payments made pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendant's
4 Counsel free and harmless from any claims resulting from treatment of such payments as non-taxable,
5 including the treatment of such payments as not subject to withholding or deduction for payroll and
6 employment taxes. No party has made any representation to any of the other Parties as to the taxability of
7 any payments pursuant to this Agreement, including the payments to Participating Class Members, the
8 payments to Aggrieved Employees, the payments to Class Counsel, the payments to the Class
9 Representatives, the payroll tax liability of Defendant, or the allocation of the Net Settlement Amount or
10 PAGA Payment to wage and non-wage income as provided in this Section, or otherwise as to tax
11 implications of any provision of this Agreement.

12 5.11 No Additional Contribution by Defendant: Defendant's monetary obligation under this
13 Agreement is limited to the Gross Settlement Amount and any employer side payroll taxes owed on
14 amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in
15 connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless
16 expressly provided otherwise herein. However, in the event this agreement is deemed null and void as
17 described in Section 3 because the Court, in its independent determination, finds that the Agreement does
18 not meet the standards for settlement approval, then Defendant and Plaintiffs shall be equally responsible
19 for the costs of the Settlement Administrator incurred between the date the Agreement was executed and
20 the date of such event.

21 5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement
22 only, certification of the class as defined in Section 1.5 and 4.1 is appropriate and the requisites for
23 establishing class certification have been met and are met.

24 5.13 Adequacy of Class Counsel and Class Representatives: The Parties agree that, for purposes
25 of settlement only, Class Counsel and Plaintiffs are adequate representatives for Class Members and
26 Aggrieved Employees.
27
28

1 **6. RELEASE**

2 6.1 Release of Claims by Participating Class Members: Upon the Effective Date, all
3 Participating Class Members will be deemed to fully, finally and forever release the Released Class Claims
4 as to all Released Parties. In addition, on the Effective Date, all Participating Class Members and their
5 successors in interest will be permanently enjoined and forever barred from prosecuting any of Released
6 Class Claims against any of the Released Parties.

7 6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved
8 Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all
9 Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in
10 interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA
11 Claims against any of the Released Parties.

12 6.3 Release by Plaintiffs: Upon the Effective Date, Plaintiffs will be deemed to fully, finally
13 and forever release the Released Class Claims, Released PAGA Claims, and Class Representatives'
14 Released Claims as to all Released Parties. In addition, on the Effective Date, Plaintiffs and any successors
15 in interest will be permanently enjoined and forever barred from prosecuting any of the Released Class
16 Claims, Released PAGA Claims, and Class Representatives' Released Claims against any of the Released
17 Parties.

18 **7. SETTLEMENT ADMINISTRATION**

19 7.1 Duties of Settlement Administrator: The Settlement Administrator shall be responsible for:
20 1) receiving Class Member and Aggrieved Employee contact information and confirming addresses are
21 valid; 2) calculating estimated Individual Settlement Amounts and any and all taxes associated with the
22 Individual Settlement Amounts, including employer taxes; 3) taking appropriate steps to trace and locate
23 any individual Class Members and Aggrieved Employee whose address or contact information as provided
24 to the Settlement Administrator is inaccurate or outdated and mailing the Notice of Settlement to Class
25 Members; 4) providing notification to the appropriate state and federal officials of this Agreement as
26 required under the law; 5) receiving, independently reviewing, and resolving any challenges (in
27 consultation with Class Counsel and Defendant's Counsel) from Class Members or Aggrieved Employees,
28 including any associated documentation, regarding their Qualified Workweek calculations; 6) receiving

1 and serving on Class Counsel, Defendant's Counsel, and the Court, copies of any written objections, and/or
2 any opt out statements; 7) establishing a toll free telephone line and responding to inquiries and requests
3 for information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining a QSF; 9)
4 determining and paying the final amounts due to be paid under the Agreement after resolution of all
5 challenges, disputes, opt-outs, awarded attorneys' fees and costs, Settlement Administrator Costs, PAGA
6 Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability
7 to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes or late opt-
8 outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any residual funds
9 from uncashed checks; 12) reporting to Class Counsel and Defendant's Counsel regarding the statistics of
10 the administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of
11 forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of
12 total undeliverable Notice of Settlements; (e) the number of address traces performed for undeliverable
13 Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced addresses; (g) the
14 number of total objections received; (h) the number of opt-out requests received; (i) the number of disputes
15 received; (j) the number of disputes resolved; 13) providing a declaration to the Court regarding the final
16 statistics of the administration and compliance with all payment obligations under the Agreement; 14)
17 completing all necessary tax reporting on the QSF and payment of the Individual Settlement Amounts to
18 Participating Class Members and Aggrieved Employees; and 15) carrying out other related tasks as
19 necessary to effectuate the terms of this Agreement and any Order of the Court. All disputes relating to
20 the Settlement Administrator's ability and need to perform its duties shall be referred to the Court, if
21 necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until
22 all payments and obligations contemplated by the Agreement have been fully executed.

23 7.2 Notice to Class Members and Aggrieved Employees: The Notice of Settlement shall be
24 sent to Class Members in English and Spanish. The Notice of Settlement will provide Class Members and
25 Aggrieved Employees with a summary of the terms and conditions of the Agreement, how to participate
26 in the settlement, how to object to the Agreement, how to dispute the individual's Qualifying Workweeks,
27 and how to opt-out from the Agreement. The Notice of Settlement will also inform Class Members and
28 Aggrieved Employees of the Gross Settlement Amount, Net Settlement Amount, proposed attorneys' fees

1 and costs allocations, any proposed Enhancement Payments, proposed Settlement Administrator Cost
2 allocations, proposed PAGA Payment allocations, the scope of the class, the nature and extent of the
3 released claims, dates set for a fairness hearing and hearing on Class Counsels' motion for attorneys' fees
4 and costs. The Notice of Settlement shall include information regarding Class Member's and Aggrieved
5 Employee's estimated Individual Settlement Amount. The Notice of Settlement will provide information
6 on how to access electronic copies online of the Notice of Settlement, any motions for approval of the
7 Agreement, any motions for approval of attorneys' fees and costs, and any other documents as the Court
8 directs.

9 7.3 Class Member Data and Mailing: No later than fourteen (14) calendar days after the
10 Preliminary Approval Date, Defendant shall provide the Settlement Administrator with the first and last
11 name, last known mailing address, last known telephone number, Social Security Number, start and end
12 date (if any) of employment of each Class Member and Aggrieved Employee, and any other information
13 the Settlement Administrator needs to effectuate notice to Class Members and Aggrieved Employees as
14 outlined herein. The Settlement Administrator shall review the data to determine the number of Qualifying
15 Workweeks for each Class Member and Aggrieved Employee. No later than fourteen (14) calendar days
16 after receipt of such address information, the Settlement Administrator will perform a national change of
17 address ("NCOA") search, update the addresses per the results of the NCOA search, and then mail the
18 Notice of Settlement, substantially in the form attached as Exhibit 1, to each Class Member and Aggrieved
19 Employee by first-class mail, postage prepaid. The Settlement Administrator shall maintain all information
20 received from Defendant confidential to itself, and Defendant's Counsel. However, Class Counsel shall
21 be able to review the breakdown of Qualified Workweeks and estimated Individual Settlement Amounts
22 for Class Members and Aggrieved Employees prior to mailing for quality assurance provided the personal
23 identifying information is redacted and/or omitted.

24 7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement
25 is returned to the Settlement Administrator as undeliverable on or before the conclusion of the Notice
26 Period, the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5)
27 calendar days. If no forwarding address is provided, then the Settlement Administrator shall promptly
28 attempt to determine a correct address using a skip-trace, computer or other search using the name, address

1 and/or Social Security number of the individual involved, and shall then perform a single re-mailing within
2 five (5) calendar days to any more recent address found as a result of the search. Following each search
3 that does not result in a corrected address, for those Class Members who appear to be current employees
4 of Defendant at the time of the Preliminary Approval Date, the Settlement Administrator shall contact
5 Defendant's Counsel for assistance and Defendant shall cooperate in good faith with the Settlement
6 Administrator's reasonable efforts to obtain valid mailing addresses for Class Members to the extent they
7 are active employees of Defendant. In the event the Notice of Settlement is forwarded to a new address
8 and/or re-mailed to a Class Member, the deadline for the Class Member to submit any request to opt-out,
9 a dispute, or an objection shall be the end of the Notice Period or 10 days from the date of the re-
10 mailing/forwarding to a new address, whichever is later. In the event the procedures in this Section are
11 followed and the Class Member does not timely and properly request to opt-out, the Class Member shall
12 be bound by all terms of the Agreement, including the releases contained in Section 6.

13 7.5 Responses to Notice of Settlement:

14 7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish to
15 exclude themselves from the Agreement must submit a request to opt-out as provided in this Section. The
16 request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that he or
17 she does not want to be a Class Member, does not want to participate in the settlement, and/or wants to be
18 excluded from the settlement; (c) identify the case name and number (*i.e. Salvador Escobar Cabrera, et*
19 *al. v. Mike McCall Landscape, Inc.*, Case No. 23CV005083); (d) be signed; and (e) be post-marked no later
20 than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The Class Member
21 must personally sign the request to opt-out. No request to opt-out may be made on behalf of a group of
22 Class Members. The date of the postmark on the return-mailing envelope shall be the exclusive means
23 used to determine whether a request to opt-out has been timely submitted. Any Class Member who requests
24 to opt-out of the Agreement will not be entitled to any portion of the Net Settlement Amount nor will they
25 have any right to object, appeal or comment thereon. The name of any Class Member who submits a valid
26 and timely opt out request will be specifically identified in any proposed order granting final approval.
27 Class Members who fail to submit a valid and timely request to opt-out shall be bound by all terms of the
28 Agreement and any order or final judgment thereon. Regardless of whether an Aggrieved Employee opts

1 out of being a Class Member, they will still receive their share of the PAGA Payment as Aggrieved
2 Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims.

3 7.5.2 *Objection Procedures:* Any Class Member who does not opt-out, but who wishes
4 to object to this Agreement or otherwise to be heard concerning this Agreement, may submit a written
5 objection to the Settlement Administrator, who will promptly provide copies of the objection to Class
6 Counsel and Defendant's Counsel. The Notice of Settlement shall make clear that the Court can only
7 approve or deny the Agreement, not change the terms of the Agreement. The written objection should (a)
8 state the Class Member's full name and date of birth; (b) provide evidence that the individual is, in fact, a
9 Class Member; (c) state the reasons for the objection(s), including any supporting documentation; (d)
10 identify the case name and number (*i.e. Salvador Escobar Cabrera, et al. v. Mike McCall Landscape, Inc.*,
11 Case No. 23CV005083); (e) be signed; and (f) be post-marked no later than the conclusion of the Notice
12 Period or the re-mailing timeline stated in Section 7.4. Additionally, or in the alternative to sending a
13 written objection to the Settlement Administrator, any Class Member may appear at the final approval
14 hearing to state their objection.

15 7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying
16 Workweeks on the Notice of Settlement shall contact the Settlement Administrator. The dispute must (a)
17 identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c)
18 be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing
19 timeline stated in Section 7.4. The Settlement Administrator shall promptly (in no event more than two
20 business days) forward all such disputes to Defendant's Counsel and request that Defendant review the
21 dispute. Defendant's records shall presumptively control unless the Class Member can produce
22 documentation evidencing other periods of employment worked. If Defendant agrees with submitted
23 information, the Class Member shall be credited or subtracted Qualifying Workweeks in accordance with
24 their submitted dispute and that final number of Qualified Workweeks shall govern the calculation of that
25 Class Member's Individual Settlement Amount. If Defendant disagrees with the submitted information,
26 Defendant's Counsel will promptly advise Class Counsel of the dispute, which includes turning over any
27 documentation submitted by the Class Member as part of the dispute. Defendant's Counsel and Class
28 Counsel shall attempt in good faith to resolve any such dispute within five (5) calendar days of Class

Counsel being advised of the dispute. Each dispute that Defendant's Counsel and Class Counsel cannot timely resolve shall be resolved by the Settlement Administrator, subject to Court review.

7.5.4 *Deficient Opt-Outs, Objections, or Disputes:* In the event that a deficient opt-out, objection, or dispute is received on or before the conclusion of the Notice Period, the Settlement Administrator shall mail a letter to the Class Member within five (5) calendar days informing them of the deficiency. If a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure the deficiency shall be the end of the Notice Period or 10 calendar days from the date of the deficiency letter, whichever is later.

7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class Counsel or Defendant's Counsel to provide notice of the proposed Agreement.

7.7 Settlement Administrator Declaration Regarding Notice Period: Within fourteen (14) calendar days after the conclusion of the Notice Period, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the statistics and responses of settlement administration to date and all the Settlement Administrators' obligations under Sections 5.8 to 5.9.3 and 7.1 to 7.5.4.

7.8 Settlement Administrator Payments to Participating Class Members, Class Counsel and Plaintiffs: Within seven (7) calendar days after the Effective Date and the Court's determination of the amount of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to Plaintiffs, the PAGA Payment, and Settlement Administrator Costs, the Settlement Administrator shall calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendant's Counsel. Defendant shall wire the Gross Settlement Amount and applicable taxes necessary to fund the Settlement as described in Section 5.1 to the Settlement Administrator within twenty-one (21) calendar days after the Effective Date to be to be held in trust in a QSF. Within seven (7) calendar days after Defendant fund the settlement, the Settlement Administrator shall deliver payment of Class Counsels' attorney's fees and costs, the Enhancement Payment payable to

1 Plaintiffs, the 75% portion of the PAGA Payment payable to the LWDA, Settlement Administrator Costs,
2 and payment to Participating Class Members and/or Aggrieved Employees as required under this
3 Agreement and approved by Court.

4 7.8.1 The Settlement Administrator shall wire the Court-approved attorneys' fees and
5 costs to Class Counsel unless another method is requested by Class Counsel. Class Counsel shall provide
6 the Settlement Administrator with the pertinent taxpayer identification number and payment instructions
7 after the Final Approval Date.

8 7.8.2 The Settlement Administrator shall send a check by mail for the Court-approved
9 Enhancement Payment to the Class Representatives, care of Class Counsel unless another method is
10 requested by Class Counsel.

11 7.8.3 Only Participating Class Members and Aggrieved Employees will receive their
12 Individual Settlement Amount.

13 7.8.4 The Settlement Administrator shall remit and report the applicable portions of the
14 payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this
15 Agreement. Defendant agrees to reasonably cooperate with the Settlement Administrator to the extent
16 necessary to determine the amount of the payroll tax payment required.

17 7.9 Settlement Check Expiration and Uncashed Checks: The Settlement Administrator shall
18 issue Individual Settlement Amounts to Participating Class Members and Aggrieved Employees in the
19 form of a check, which shall become null and void if not deposited within one hundred eighty (180)
20 calendar days of issuance. After one hundred eighty (180) calendar days of issuance, the checks shall be
21 voided and funds from all uncashed checks shall be transmitted in accordance with Section 5.6. The
22 Settlement Administrator shall deliver these funds within fourteen (14) calendar days after the check
23 cashing deadline.

24 7.10 Settlement Administrator Declaration Regarding Compliance and Settlement
25 Administration: Within twenty-one (21) calendar days after the last day for Participating Class Members
26 and Aggrieved Employees to cash their settlement checks, the Settlement Administrator shall provide Class
27 Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete
28 and detailed report regarding the settlement administration documenting that all payments under the

Agreement have been made, that the Court's final approval order has been complied with, and that all the obligations of the Settlement Administrator have been completed.

8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Class Members and Aggrieved Employees, and sets further hearings. The schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

Last day for Defendant to provide Settlement Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
Last day for Defendant to fund settlement	Within 21 calendar days after the Effective Date

Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has funded the settlement
Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

9. DUTIES OF THE PARTIES

9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the Preliminary Approval Motion to Defendant's Counsel. Defendant's Counsel will provide comments and/or proposed revisions within two weeks after receipt of the draft Preliminary Approval Motion from Class Counsel. With regard to the final approval documents, a similar one-week maximum review and response time shall be observed by the Parties. The Parties will request that the Court's preliminary approval of this

Agreement be embodied in an Order Granting Preliminary Approval of Class Action and PAGA Settlement.

9.1.1 Plaintiffs' motion shall seek an order: 1) Preliminarily approving the Agreement; 2) Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the Notice of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily appointing Plaintiffs and Class Counsel as representatives of Class Members; 5) Preliminarily approving settlement administration services to be provided by the Settlement Administrator; 6) Preliminarily approving the proposed Enhancement Payment to Plaintiffs; 7) Preliminarily approving the application for payment of reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8) Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally approved as fair, reasonable and adequate as to the Class Members.

9.1.2 Defendant shall not oppose Plaintiffs' motion for approval of the proposed Agreement.

9.1.3 The Parties shall cooperate with each other and the Settlement Administrator during the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and appropriate to assure effective communication to individual Class Members of information about their rights and obligations under this Agreement.

9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the Agreement, a declaration by the Settlement Administrator of due diligence and proof of mailing of the Notice of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results of the Settlement Administrator's mailings including tracing and re-mailing efforts. The Settlement Administrator declaration shall identify, by name, any Class Member who submitted a timely and valid request to opt out during the Notice Period.

9.2.1 Class Counsel and Defendant shall work in good faith to draft a mutually agreeable Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment. The Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment shall

1 include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair, reasonable
2 and adequate, and directing that its terms and provisions be carried out; 2) Approving the payment of an
3 Enhancement Payment to the Class Representatives; 3) Approving Class Counsel's application for an
4 award of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4) Approving the
5 Settlement Administrator Costs; and 5) Providing that the Court will retain jurisdiction to oversee
6 administration and enforcement of the terms of the Agreement and the Court's orders.

7 9.2.2 Following entry of the Court's order granting final approval of the Agreement, the
8 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the following:
9 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside the judgement
10 be filed, all parties will support the final approval order on appeal or otherwise; 2) Class Counsel will assist
11 the Settlement Administrator as needed or requested in the process of identifying and locating Participating
12 Class Members and Aggrieved Employees entitled to payments under the Agreement and assuring delivery
13 of such payments; 3) Class Counsel and Defendant's Counsel will cooperate with each other and assist the
14 Settlement Administrator as needed or requested in completing the distribution of any residual amounts, as
15 specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with the Settlement
16 Administrator, will certify to the Court completion of all payments required to be made by this Agreement.

17 9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness
18 hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action and
19 PAGA Settlement and Final Judgment.

20 9.4 Notice to LWDA: Plaintiffs will provide notice to the Labor and Workforce Development
21 Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(1)(2).

22 **10. MISCELLANEOUS TERMS**

23 10.1 Defendant's Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date,
24 10% or more of the Class Members have submitted proper and timely requests to opt-out in accordance
25 with the provisions of the Agreement, Defendant may rescind the Agreement and all actions taken in its
26 furtherance will be thereby null and void. Defendant must exercise this right of rescission, in writing, to
27 Class Counsel, within seven (7) calendar days after the Settlement Administrator notifies the Parties of the
28 total number of opt-outs. If the option to rescind is exercised, then any Settlement Administrator Costs

1 shall be paid by Defendant. Defendant has represented that there are no more than 59,714 workweeks
2 during the Class Period. In the event the number of workweeks during the Class Period is more than
3 65,686 (*i.e.*, greater than 10% more than 59,714), then the Gross Settlement Amount shall be increased
4 proportionally by the percentage increase in workweeks over 10%. For example, if the final number of
5 workweeks were 11% greater than the 59,714 then Defendant would have to increase the Gross
6 Settlement Amount by 1%. In the alternative, if the number of workweeks during the Class Period
7 exceeds the 10% threshold, Defendant may elect to shorten the Class Period such that the total number
8 of workweeks does not exceed the 10% threshold. To the extent this option is chosen, the PAGA Period
9 shall be similarly shortened to have the same end date.

10 10.2 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
11 THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT
12 OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND
13 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
14 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
15 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
16 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
17 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
18 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
19 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
20 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
21 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
22 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
23 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
24 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX
25 PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
26 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
27 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX
28 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON

1 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
2 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY
3 THIS AGREEMENT.

4 10.3 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
5 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
6 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
7 and discharged in this Agreement.

8 10.4 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
9 signing this Agreement Defendant is waiving any rights to appeal from the Court's approval of the
10 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement
11 Plaintiffs are waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

12 10.5 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
13 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
14 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

15 10.6 Judgment and Retention of Jurisdiction to Enforce: Upon the Effective Date, judgment will
16 be entered according to this Agreement. The Parties stipulate and agree that the Sacramento County
17 Superior Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil
18 Procedure Code section 664.6 and that the prevailing party any action necessary to enforce the terms of the
19 Agreement after default by the other party may recover reasonable attorney's fees and costs related thereto.

20 10.7 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
21 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to, execution
22 of such other documents and the taking of such other action as may reasonably be necessary to fulfill the
23 terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
24 contemplated by this Agreement and any other efforts that may become necessary by Court order, or
25 otherwise, to effectuate this Agreement and the terms set forth herein.

26 10.8 No Admission of Liability: Neither the acceptance nor the performance by Defendant of
27 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
28 be, construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in the

1 Complaint, the representative character of the Action, the validity of any of the claims that were or could
2 have been asserted by Plaintiffs and/or Class Members in the Action, or of any liability or guilt of
3 Defendant in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
4 Defendant of any liability, culpability, negligence, or wrongdoing toward Plaintiffs, the Class Members,
5 or any other person, and Defendant specifically disclaim any liability, culpability, negligence, or
6 wrongdoing toward Plaintiffs, the Class Members, or any other person. Each of the Parties has entered
7 into this Stipulation with the intention to avoid further disputes and litigation.

8 10.9 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
9 communications given hereunder shall be in writing and shall be deemed to have been duly given as of the
10 third business day after mailing by United States certified mail, return receipt requested, addressed as
11 follows:

12 To Plaintiffs and the Class:

13 Galen T. Shimoda
14 Justin P. Rodriguez
15 Renald Konini
16 Shimoda & Rodriguez Law, PC
17 9401 East Stockton Blvd., Suite 120
18 Elk Grove, CA 95624

19 To Defendant:

20 Richard T. Bowles
21 Jason J. Granskog
22 Bowles & Verna LLP
23 2121 N. California Blvd., Suite 875
24 Walnut Creek, California 94596

25 10.10 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of
26 this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that
27 this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
28 party or its counsel participated in the drafting of this Agreement.

10.11 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys
acting for, or purporting to act for, the Class, Class Members, or Plaintiffs, may recover or seek to recover
any amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except
as expressly provided in this Agreement.

1 10.12 No Modifications: This Agreement may be amended or modified only by a written
2 instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be
3 discharged except by performance in accordance with its terms.

4 10.13 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and
5 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and
6 to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
7 to effectuate its terms and to execute any other documents required to effectuate the terms of this
8 Agreement.

9 10.14 Class Member Signatories: Because the Action has not yet been certified, and the Class
10 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member
11 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement
12 may be executed on behalf of all Class Members by the Class Representatives.

13 10.15 Counterparts: This Agreement shall become effective upon its execution by all of the
14 undersigned. Plaintiffs, Class Counsel, Defendant and Defendant's Counsel may execute this Agreement
15 in counterparts, and execution of counterparts shall have the same force and effect as if each had signed
16 the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force
17 and effect of originals.

18 10.16 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
19 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and the
20 rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with,
21 and governed by, the substantive laws of the State of California without giving effect to that State's choice
22 of law principles.

23 10.17 Headings and Captions: Section titles or captions contained in the Agreement are inserted
24 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
25 this Agreement, or any provision thereof.

26 10.18 No Retaliation or Discouragement: The Parties agree they will take no action that could be
27 construed as retaliation against any Class Members for participating or seeking to participate in this class
28 action settlement. The Parties will not discourage any class member from participating or seeking to

1 participate in this class action settlement. This is a material term of the Agreement and non-breaching
2 Parties will seek court intervention if this provision is breached.

3 10.19 Integrated Agreement: This Agreement sets forth the entire understanding between the
4 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
5 Each party acknowledges that there is no representation, inducement, promise or agreement which has been
6 made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which
7 is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the
8 terms of this Agreement are fully understood and voluntarily accepted by the Parties.

9 10.20 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to the
10 benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

11 10.21 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
12 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
13 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

14 10.22 Waiver of Compliance: No waiver of any condition or covenant contained in this
15 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
16 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

17 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
18 attorneys, as of the day and year herein set forth.

19 **For Plaintiffs:**

20 Date: 08/08/2024

21 Salvador Escobar C.
22 Salvador Escobar Cabrera

23 Date: 08/08/2024

24 JUAN ESCOBAR C.
25 Juan Escobar Cabrera

26 **FOR Defendant:**

27 Date: _____

28 By: _____
For Mike McCall Landscape, Inc.,

1 participate in this class action settlement. This is a material term of the Agreement and non-breaching
2 Parties will seek court intervention if this provision is breached.

3 10.19 Integrated Agreement: This Agreement sets forth the entire understanding between the
4 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
5 Each party acknowledges that there is no representation, inducement, promise or agreement which has been
6 made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which
7 is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the
8 terms of this Agreement are fully understood and voluntarily accepted by the Parties.

9 10.20 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to the
10 benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

11 10.21 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
12 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
13 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

14 10.22 Waiver of Compliance: No waiver of any condition or covenant contained in this
15 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
16 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

17 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
18 attorneys, as of the day and year herein set forth.

19 **For Plaintiffs:**

20 Date: _____

21 _____
Salvador Escobar Cabrera

22 Date: _____

23 _____
Juan Escobar Cabrera

24 **FOR Defendant:**

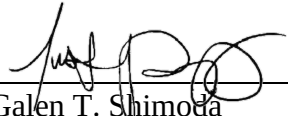
25 Date: 8-3-24

26 _____
By: Mike McCall CEO
27 For Mike McCall Landscape, Inc.,
28

APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

Dated: 8/9/24

By: 
Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Attorney for Plaintiffs and Aggrieved
Employees

APPROVED AS TO FORM

BOWLES & Verna LLP

Dated: _____

By: _____
Richard T. Bowles
Jason J. Granskog
Attorneys for Defendant

1
2
3 APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

4
5 Dated: _____

By: _____

Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Attorney for Plaintiffs and Aggrieved
Employees

6
7
8
9 APPROVED AS TO FORM

BOWLES & VERNA LLP

10
11 Dated: B-B-24

By: _____

Richard T. Bowles
Jason J. Granskog
Attorneys for Defendant

Exhibit 1

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

SALVADOR ESCOBAR CABRERA and JUAN
ESCOBAR CABRERA, individually and on
behalf of all other similarly situated employees,

Plaintiffs,

vs.

MIKE MCCALL LANDSCAPE, INC., a
California Corporation; and DOES 1 to 100,
inclusive,

Defendant.

Case No. 23CV005083

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: all individuals who have, or continue to, work for Defendants in California as non-exempt employees from July 20, 2019, to [REDACTED] (the “Class Members”).

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

You are receiving this notice pursuant to an order from the Sacramento County Superior Court (“Court”) granting Plaintiffs’ motion for preliminary approval of a Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement” or “Settlement”) as fair, reasonable, and adequate. The Settlement was entered into between Plaintiffs Salvador Escobar Cabrera and Juan Escobar Cabrera (“Plaintiffs” or “Class Representatives”), and Defendant Mike McCall Landscape, Inc. (“Defendant”), on behalf of Class Members as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant’s records indicate you fall within the definition of “Class Member.” Defendant’s records also indicate that you worked [REDACTED] weeks during the applicable Class Period (as defined below), which means your total share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court’s order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On July 20, 2023, Plaintiffs filed a Complaint against Defendant in the Sacramento County Superior Court of California on behalf of themselves and Class Members. The term “Action” means this putative class action pending in Sacramento County Superior Court, Case No. 23CV005083. The Class Period is July 20, 2019, to [REDACTED] (the “Class Period”).

In the Action, Plaintiffs sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of themselves, Class Members, and Aggrieved Employees. Plaintiffs alleged that Defendant violated California law by 1) failing to pay overtime wages, 2) failing to pay minimum wages, 3) failing to pay prevailing wages, 4) failing to provide meal periods or pay premiums in lieu thereof, 5) failing to provide rest periods or pay premiums in lieu thereof, 6) failing to provide accurate wage statements, 7) failing to pay final wages, 8) failing to pay reimbursement for expenses, 9) failing to maintain accurate wage records, 10) failing to pay sick leave, 11) engaging in unfair competition, and 12) committing PAGA violations. Defendant has denied all of Plaintiffs’ allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process.

Despite agreeing to and supporting the Agreement, Defendant continue to deny all allegations and claims. Defendant has entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all individuals who have, or continue to, work for Defendants in California as non-exempt employees from July 20, 2019, to [REDACTED]. The Agreement also applies to Aggrieved Employees, which are defined as all non-exempt employees who have, or continue to, work for Defendants in California from July 18, 2022, to [REDACTED]. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself (“opt out”) from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant has agreed to pay a total sum of Six Hundred Eighty-Five Thousand Dollars (\$685,000) (“Gross Settlement Amount”). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys’ fees not to exceed 35% of the Gross Settlement Amount, attorneys’ costs not to exceed \$10,000, Settlement Administrator Costs estimated not to exceed \$20,000, Class Representatives’ Enhancement Payments of \$10,000 each, and \$40,000 for alleged PAGA penalties (the “PAGA Payment”), which will result in a “Net Settlement Amount” for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member’s share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$40,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees.

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment (“Individual Settlement Amount”) is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (*i.e.*, those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees’ allocations for the PAGA claim.

B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that the amount payable to eligible Class Members from the Net Settlement Amount will be allocated and paid as 80% for disputed interest, statutory penalties, and other non-wage damages for which an IRS Forms 1099-MISC and 1099-INT will issue and 20% for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member’s share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member’s individual share of the Net Settlement Amount. Each Aggrieved Employee’s share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee’s individual share. The PAGA Claim Period is defined as July 18, 2022, to [REDACTED]. Defendant’s records indicate that you worked [REDACTED] weeks during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant's Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than [redacted]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released [1.30 text].

Aggrieved Employees will be deemed to have released [1.31 text].

The individuals released ("Released Parties") include Defendant, as well as Defendant's officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members and/or Aggrieved Employees can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if they have questions about the released claims and what they mean.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from being a Class Member if you request this by [redacted]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (i.e., "opt out") by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (i.e. *Escobar Cabrera, et al. v. Mike McCall Landscape, Inc.*, 23CV005083); (d) be signed; and (e) be post-marked no later than [redacted]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [redacted], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not receive their share of the Net Settlement Amount. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by submitting an objection. You **cannot**

ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. You may submit a written objection, which should (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (*i.e. Escobar Cabrera, et al. v. Mike McCall Landscape, Inc.*, 23CV005083); (e) be signed; and (f) be post-marked no later than [REDACTED]. Written objections must be sent to the Settlement Administrator at the address identified in Section III.B.

Additionally, or in the alternative to sending a written objection to the Settlement Administrator, you may appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. A notice of entry of judgment will be filed with the Court and available online at <https://prod-portal-sacramento-ca.journaltech.com/public-portal/>. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and Aggrieved Employee, will release Defendant and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 22, 720 9th Street, Sacramento, California 95814, on [REDACTED] at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. To join by Zoom: <https://saccourt-ca.gov.zoomgov.com/my/sscdept22>. To join by phone: (833) 568-8864 / ID 16184738886. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representatives' Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at <https://prod-portal-sacramento-ca.journaltech.com/public-portal/>. You can also contact Class Counsel or Defendant's Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiffs

Richard T. Bowles
Jason J. Granskog
Bowles & Verna LLP
2121 N. California Blvd., Suite 875
Walnut Creek, California 94596
Telephone: (925) 935-3300
Facsimile: (925) 935-0371
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

Exhibit B

Filed
Superior Court of California,
Sacramento
11/20/2023
leurgac
By _____, Deputy
23CV005083

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Brittany V. Berzin (Cal. State Bar No. 325121)
4 Shimoda & Rodriguez Law, PC
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiffs SALVADOR ESCOBAR CABRERA
10 and JUAN ESCOBAR CABRERA

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**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

10 SALVADOR ESCOBAR CABRERA and
11 JUAN ESCOBAR CABRERA, individually
12 and on behalf of all other similarly situated
13 employees,

14 Plaintiffs,

15 vs.

16 MIKE MCCALL LANDSCAPE, INC., a
17 California Corporation; and DOES 1 to 100,
18 inclusive,

19 Defendants.

Case No. 23CV005083

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Failure to Reimburse Expenses
8. Failure to Pay Prevailing Wages
9. Unfair Competition
10. Private Attorneys General Act

DEMAND FOR JURY TRIAL

Plaintiffs SALVADOR ESCOBAR CABRERA and JUAN ESCOBAR CABRERA
 ("Plaintiffs"), on behalf of themselves and all other similarly situated employees, hereby file this
 Complaint against Defendants MIKE MCCALL LANDSCAPE, INC., a California Corporation; and
 DOES 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants"). On information
 and belief, Plaintiffs allege the following:

INTRODUCTION

1. This is a class action and Private Attorneys General Act ("PAGA") lawsuit brought by Plaintiffs for failure to pay overtime wages, failure to pay minimum wages, meal period violations, rest period violations, wage statement violations, failure to timely pay final wages, failure to reimburse expenses, failure to pay prevailing wages, and unfair competition.

JURISDICTION AND VENUE

2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to California Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code, California Business and Professions Code, and Wage Order No. 5.

3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some of the wrongful acts and violations of law asserted herein occurred within Sacramento County, and Defendants' obligation to pay wages arose in Sacramento County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

4. Plaintiffs sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of themselves and other Aggrieved Employees. Pursuant to Labor Code section 2699.3, Plaintiffs gave written notice via online submission to the Labor and Workforce Development Agency ("LWDA") on approximately July 18, 2023. Plaintiffs provided facts and legal bases for his claims within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiffs submitted the \$75.00 filing fee. The July 18, 2023 notice was also sent via certified mail to Defendants on the same day. Plaintiffs are informed and believe, that to date, the LWDA has not provided any response to Plaintiffs' notice correspondence. Accordingly, Plaintiffs are informed and believe that they have exhausted all administrative remedies pursuant to the Private Attorneys General Act and may bring

1 this action on behalf of themselves and all Aggrieved Employees. See Cal. Labor Code §
2 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19
3 (2005). Aggrieved Employees includes all non-exempt employees who have, or continue to, work for
4 Defendants in California from July 18, 2022 to the present.

5 **PARTIES**

6 5. SALVADOR ESCOBAR CABRERA is an individual over the age of eighteen (18)
7 and is a resident of the State of California.

8 6. JUAN ESCOBAR CABRERA is an individual over the age of eighteen (18) and is a
9 resident of the State of California.

10 7. On information and belief, Plaintiffs allege, MIKE MCCALL LANDSCAPE, INC., is
11 now and/or at all times mentioned in this Complaint was a California Corporation and the owner and
12 operator of an industry, business and/or facility doing business in the State of California.

13 8. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
14 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
15 are liable for the actions herein alleged. Plaintiffs will seek to amend this Complaint to allege the true
16 names and capacities of these DOE Defendants when they are ascertained.

17 9. At all times mentioned herein, each Defendant was the agent or employee of each of the
18 other Defendants and was acting within the course and scope of such agency or employment. The
19 Defendants are jointly and severally liable to Plaintiffs.

20 10. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
21 were members of and/or engaged in a joint employment, joint venture, partnership and common
22 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
23 joint venture, partnership and common enterprise.

24 11. Defendants, and each of them, now and/or at all times mentioned in this Complaint
25 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

26 12. Defendants proximately caused Plaintiffs to be subjected to the unlawful practices,
27 wrongs, complaints, injuries and/or damages alleged in this Complaint.

28 //

CLASS ALLEGATIONS

13. Plaintiffs bring the First through Ninth Causes of Action on behalf of themselves and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiffs seek to represent is composed of, and defined, as follows:

all individuals who have, or continue to, work for Defendants in California as non-exempt employees from July 20, 2019 to the present.

14. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) **Numerosity**: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiffs at this time, Plaintiffs are informed and believe that Defendants have employed as many as fifty (50) individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) **Common Questions Predominate**: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

- (1) Whether Defendants paid putative class members for all regular hours worked;
- (2) Whether Defendants paid putative class members for all overtime hours worked;
- (3) Whether Defendants accurately recorded putative class members' hour worked;
- (4) Whether Defendants authorized and permitted putative class members to take all meal periods they were entitled to;
- (5) Whether Defendants authorized and permitted putative class members to take all rest periods they were entitled to;

- (6) Whether Defendants had a policy or practice to provide a second meal period when putative class members worked shifts longer than ten (10) hours;
- (7) Whether Defendants had a policy or practice to pay meal period premiums;
- (8) Whether Defendants had a policy or practice to provide a second rest period when putative class members worked shifts longer than six (6) hours;
- (9) Whether Defendants had a policy or practice to provide a third rest period when putative class members worked shifts longer than ten (10) hours;
- (10) Whether Defendants had a policy or practice to pay rest period premiums;
- (11) Whether Defendants had a policy or practice to pay prevailing wages for work putative class members did on public works jobs;
- (12) Whether Defendants correctly calculated putative class members' regular rates of pay;
- (13) Whether Defendants required putative class members to use their personal cellphones for work;
- (14) Whether Defendants required putative class members to incur bridge tolls for work;
- (15) Whether Defendants had a policy or practice to reimburse putative class members for business expenses;
- (16) Whether as a result of Defendants' policies and practices putative class members received all wages, due and owing, at the time of their termination or separation; and
- (17) Whether Defendants provided putative class members with wage statements that complied with Labor Code section 226.

(c) Typicality: Plaintiffs' claims are typical of the claims of the members of the putative class. The putative class also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Plaintiffs and all members of the putative class were non-exempt employees who were not paid for all regular and overtime hours worked, were not paid all prevailing wages owed, were not

1 paid the correct regular rates of pay, did not receive all meal and rest periods they were
2 entitled to, and incurred expenses from the use of their personal cellphones and bridge
3 tolls without being reimbursed. Additionally, Defendants issued Plaintiffs and all
4 members of the putative class wage statements that did not comply with Labor Code
5 section 226. As a result, Plaintiffs and each member of the putative class will have
6 suffered the same type of harm and seek the same type of recovery based on the same
7 legal theories.

8 (d) Adequacy: Plaintiffs will fairly and adequately protect the interests of the members of the
9 putative class. For all relevant times, Plaintiffs resided in California and worked for
10 Defendants in California. Moreover, Plaintiffs are adequate representatives of the
11 putative class as Plaintiffs have no interests that are adverse to those of putative class
12 members. Additionally, Plaintiffs have retained counsel who has substantial experience
13 in complex civil litigation and wage and hour matters.

14 (e) Superiority: A class action is superior to other available means for the fair and efficient
15 adjudication of the controversy since individual joinder of all members of the putative
16 class is impracticable. Class action treatment will permit a larger number of similarly
17 situated persons to prosecute their common claims in a single forum simultaneously,
18 efficiently, and without the unnecessary duplication of effort and expense that numerous
19 individual actions would engender. Further, as damages suffered by each individual
20 member of the class may be relatively small, the expenses and burden of the individual
21 litigation would make it difficult or impossible for individual members of the class to
22 redress the wrongs done to them, and an important public interest will be served by
23 addressing the matter as a class action. The cost to the court system of adjudication of
24 such individualized litigation would be substantial. Individualized litigation would also
25 present the potential for inconsistent or contradictory judgments.

26 15. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
27 management of this action that would preclude its maintenance as a class action.

28 //

GENERAL ALLEGATIONS

16. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 15 as though fully set forth herein.

17. Plaintiffs Salvador Escobar Cabrera and Juan Escobar Cabrera worked for Defendants in California during the claim period as non-exempt employees. Similarly situated employees also worked for Defendants in California during the claim period as non-exempt employees.

18. Defendants failed to accurately record Plaintiffs' and similarly situated employees' hours worked. Defendants did not accurately record employees' actual start and end times or the actual start and end times of meal periods, to the extent any were taken. In addition, Defendants shaved time off of Plaintiffs' and similarly situated employees' hours worked and automatically deducted forty-five minutes for lunch each day even when meal periods were not taken or, if taken, they were less than forty-five minutes. These practices resulted in unpaid minimum and overtime wages.

19. Plaintiffs and similarly situated employees worked on prevailing wage jobs and non-prevailing wage jobs. Plaintiff and similarly situated employees also performed worked over eight (8) hours in a day and/or forty (40) hours in a week, earning overtime. When employees worked on prevailing wage and non-prevailing wage jobs within the same workday and/or workweek, Defendants did not correctly incorporate the value of the prevailing wage rates into Plaintiffs' and similarly situated employees' regular rates of pay for the purpose of calculating overtime wages for non-prevailing wage overtime hours. Defendants also paid Plaintiffs and similarly situated employees paid sick time when they worked on prevailing wage and non-prevailing wage jobs within the same day or workweeks without correctly incorporating the value of prevailing wage rates into Plaintiffs' and similarly situated employees' regular rates of pay.

20. Defendants did not authorize and permit Plaintiffs and similarly situated employees to take all meal and rest periods owed to them. Defendants employed Plaintiffs and similarly situated employees for work for periods of more than five hours without providing them an off-duty meal period of at least 30 minutes. Defendants did not have a policy or practice to provide Plaintiffs and similarly situated employees with second meal periods when they worked shifts longer than ten (10) hours. Defendants employed Plaintiffs and similarly situated employees for periods of more than six (6) hours

1 without providing a second ten (10) minute rest period. Defendants also did not have a policy or
2 practice to provide Plaintiffs and similarly situated employees with a third rest period when they worked
3 shifts longer than ten (10) hours. Defendants did not pay Plaintiffs and similarly situated employees all
4 missed meal and rest period premiums they were owed.

5 21. Plaintiffs and similarly situated employees worked on public works jobs during their
6 employment for which they should have been paid prevailing wages. Plaintiffs and similarly situated
7 employees also worked over eight (8) hours in a day and/or forty (40) hours in a week on these jobs
8 incurring overtime. However, Defendants failed to pay Plaintiffs and similarly situated employees all
9 prevailing wages and prevailing wage overtime wages they were entitled to.

10 22. Defendants required Plaintiffs and similarly situated employees to use their personal
11 cellphones for work to communicate with Defendants' management. Defendants also required Plaintiffs
12 and similarly situated employees to travel to different job sites that required them to drive routes that
13 incurred bridge tolls. Defendants did not have any policy or practice to reimburse Plaintiffs and
14 similarly situated employees for these expenses.

15 23. Due to the practices and policies outline above, Defendants did not provide Plaintiffs and
16 similarly situated employees with accurate wage statements. For example, the wage statements did not
17 include accurate gross and net wages earned, total hours worked by the employee, the inclusive dates of
18 the period for which the employee is paid, and all applicable hourly rates in effect during the pay period
19 and the corresponding number of hours worked at each hourly rate by the employee, including but not
20 limited to rates and corresponding hours for prevailing wages, minimum and overtime wages, paid sick
21 time, and meal and rest period premiums.

22 24. At the time of Plaintiffs' and similarly situated employees' termination or separation they
23 had wages owed to them, including minimum wages, overtime wages, prevailing wages, used but not
24 fully paid sick leave wages, and meal and rest period premiums. To date, these wages remain unpaid.

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CAUSES OF ACTION
FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(As to all Defendants)

25. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 24 as though fully set forth herein.

26. During the period Plaintiffs were employed by Defendants, Defendants were required to compensate Plaintiffs at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 5, section (3)(A); Cal. Lab. Code §§ 510, 1194.*

27. Plaintiffs and similarly situated employees worked in excess of eight (8) hours per day and/or forty (40) hours per week on several occasions while employed by Defendants. However, Defendants failed to compensate Plaintiffs and similarly situated employees for all overtime hours worked at their regular rate of pay.

28. Plaintiffs and similarly situated employees were not exempt from overtime protections employees under the California Wage Orders and Labor Code.

29. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(As to all Defendants)

30. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 29 as though fully set forth herein.

31. For the period preceding the filing of this Complaint, Defendants were required to compensate Plaintiffs and similarly situated employees with at least California's applicable minimum for every hour worked. *See MW-Order 2019; IWC Wage Order, No. 5, section 4(A); Cal. Lab. Code § 1194.*

//

39. Defendants further failed to pay Plaintiffs and similarly situated employees the applicable meal period premiums for any such missed meal breaks.

40. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(As to all Defendants)

41. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 40 as though fully set forth herein.

42. An employer must provide an employee a rest period in accordance with the applicable Wage Order and California Labor Code section 226.7.

43. California Labor Code section 226.7 and Wage Order No. 5, section 12(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

44. Plaintiffs allege that Defendants failed to authorize and permit Plaintiffs and similarly situated employees to take paid rest periods of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof.

45. Defendants further failed to pay Plaintiffs and similarly situated employees the applicable rest period premiums for any such missed rest periods.

46. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

47. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 46 as though fully set forth herein.

48. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

1 (1) gross wages earned, (2) total hours worked by the employee, except for
2 any employee whose compensation is solely based on a salary and who is
3 exempt from payment of overtime under subdivision (a) of Section 515 or
4 any applicable order of the Industrial Welfare Commission, (3) the
5 number of piece-rate units earned and any applicable piece rate if the
6 employee is paid on a piece-rate basis, (4) all deductions, provided that
7 all deductions made on written orders of the employee may be aggregated
8 and shown as one item, (5) net wages earned, (6) the inclusive dates of the
9 period for which the employee is paid, (7) the name of the employee and
10 the last four digits of his or her social security number or an employee
11 identification number other than a social security number, (8) the name
12 and address of the legal entity that is the employer and, if the employer is
13 a farm labor contractor, as defined in subdivision (b) of Section 1682, the
14 name and address of the legal entity that secured the services of the
15 employer, and (9) all applicable hourly rates in effect during the pay
16 period and the corresponding number of hours worked at each hourly rate
17 by the employee. The deductions made from payment of wages shall be
18 recorded in ink or other indelible form, properly dated, showing the
19 month, day, and year, and a copy of the statement and the record of the
20 deductions shall be kept on file by the employer for at least three years at
21 the place of employment or at a central location within the State of
22 California.

23 49. Plaintiffs allege that Defendants intentionally and knowingly failed to provide an
24 itemized statement or failed to provide an accurate and complete itemized statement showing the
25 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
26 accurately itemize all applicable hourly rates in effect during the pay period, all regular and overtime
27 hours worked and corresponding rates of pay, including prevailing wage rates, and gross and net
28 wages earned. The paystubs also did not accurately itemize Plaintiff's and similarly situated
employees' total hours worked. Plaintiffs and similarly situated employees were not able to
promptly and easily determine their total hours worked from their paystubs alone. Additionally,
Plaintiffs and similarly situated employees suffered confusion over whether they received all wages
owed and were prevented from effectively challenging information on their wage statements.

50. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated
employees have been damaged as stated in the section below entitled "DAMAGES," which is
incorporated here to the extent pertinent as if set forth here in full.

SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES
(As to all Defendants)

51. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 50 as though fully
set forth herein.

1 52. An employer must pay an employee who is terminated all unpaid wages immediately
2 upon termination. See Cal. Lab. Code § 201.

3 53. An employer must pay an employee who resigns all unpaid wages within seventy-two
4 (72) hours of their resignation. See Cal. Lab. Code § 202.

5 54. Plaintiffs and similarly situated employees did not receive all wages, including minimum
6 and overtime wages, prevailing wages, meal and rest period premiums, or all sick leave pay owed at
7 their termination or within the required time after their separation from employment.

8 55. An employer who willfully fails to pay an employee wages in accordance with California
9 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
10 days. See Cal. Lab. Code § 203.

11 56. Defendants knew of their obligation to pay Plaintiffs' and similarly situated employees'
12 their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiffs
13 and similarly situated employees worked on public works jobs, worked on public works and non public
14 works jobs within the same day and/or workweek, worked regular and overtime hours that were
15 accurately tracked by the company, and did not receive all meal and rest periods they were entitled to.
16 Such conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation,
17 yet Defendants still refused to pay the remaining wages owed.

18 57. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees
19 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
20 thirty (30) days for Defendants' failure to pay all wages due.

21 **SEVENTH CAUSE OF ACTION**
22 **FAILURE TO REIMBURSE EXPENSES**
 (As to all Defendants)

23 58. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 57 as though fully
24 set forth herein.

25 59. California Labor Code section 2802(a) states that "An employer shall indemnify his or
26 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of
27 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
28

1 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
2 unlawful.”

3 60. Defendants required Plaintiffs and similarly situated employees to use their personal
4 cellphones and incur bridge tolls but failed to reimburse them.

5 61. As a proximate result of Defendants’ conduct, Plaintiffs and similarly situated employees
6 have been damaged as stated in the section below entitled “DAMAGES,” which is incorporated here to
7 the extent pertinent as if set forth here in full.

8
9 **EIGHTH CAUSE OF ACTION**
FAILURE TO PAY PREVAILING WAGES
10 **(As to All Defendants)**

11 62. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 61 as though
12 fully set forth herein.

13 63. California Labor Code section 1771 states, “[e]xcept for public works projects of one
14 thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for
15 work of a similar character in the locality in which the public work is performed, and not less than
16 the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this
17 chapter, shall be paid to all workers employed on public works.” California Labor Code section
18 1774 states, “[t]he contractor to whom the contract is awarded, and any subcontractor under him,
19 shall pay not less than the specified prevailing rates of wages to all workmen employed in the
20 execution of the contract.”

21 64. Plaintiffs worked on public works jobs but were not paid the specified prevailing
22 wage and the corresponding overtime rates.

23 65. Plaintiffs and similarly situated employees were not exempt to the State’s prevailing
24 wage orders and applicable law. Defendants were aware of their obligation to pay the prevailing wages
25 but failed to do so.

26 66. As a proximate result of Defendants’ conduct, Plaintiffs and similarly situated employees
27 have been damaged as stated in the section below entitled “DAMAGES,” which is incorporated here to
28 the extent pertinent as if set forth here in full.

NINTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to Defendants MIKE MCCALL LANDSCAPE, INC. and DOES 1 to 100)

67. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 66 as though fully set forth herein.

68. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See California Business and Professions ("B&P") Code § 17200.

69. Plaintiffs and similarly situated employees were not paid all wages owed, including minimum and overtime wages, and meal and rest period premiums, prevailing wages, paid sick leave, or reimbursed for business expenses, during their employment or any time thereafter. Moreover, through Defendants conduct Plaintiff and similarly situated employees were denied statutory protections regarding meal and rest periods.

70. Plaintiffs further allege that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

71. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiffs and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

TENTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

72. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 71 as though fully set forth herein.

73. Plaintiffs have alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with him and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194, 1815; IWC Wage Order 5, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 5, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 1771, 1774, 1775 (Failure to Pay Prevailing Wages)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.7, 512; IWC Wage Order 5, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7; IWC Wage Order 5, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code § 226.3, 1174, 1812, 1198; IWC Wage Order 5, § 7(A) (Failure to Maintain Accurate Records)
- Violation of Labor Code § 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

74. Plaintiffs seek civil penalties against Defendants as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

75. Plaintiffs seek these civil penalties from Defendants pursuant to Labor Code sections 2699(a) and 2699.3.

DAMAGES

WHEREFORE Plaintiffs request relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;

1 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
2 Code section 1194;

3 3. As to the Second Cause of Action:

4 a. Wages in an amount to be proven at trial;

5 b. Interest for the wages due pursuant to California Labor Code section 1194;

6 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
7 Code section 1194;

8 d. Liquidated damages pursuant to California Labor Code section 1194.2;

9 4. As to the Third Cause of Action:

10 a. Wages in an amount to be proven at trial;

11 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
12 section 1021.5;

13 5. As to the Fourth Cause of Action:

14 a. Wages in an amount to be proven at trial;

15 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
16 section 1021.5;

17 6. As to the Fifth Cause of Action:

18 a. Penalties as provided for in Labor Code section 226, including the greater of all
19 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
20 violation occurred and one hundred dollars (\$100.00) per employee for each
21 violation in the subsequent pay periods, but not to exceed four thousand dollars
22 (\$4,000.00);

23 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
24 226(e);

25 7. As to the Seventh Cause of Action:

26 a. An amount to be proven at trial;

27 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

28 //

1 8. As to the Eighth Cause of Action:

- 2 a. Wages in an amount to be proven at trial;
- 3 b. Interest for the wages due pursuant to Labor Code section 1194;
- 4 c. For reasonable attorney's fees and costs incurred pursuant to Labor Code sections
- 5 1194, 1021.5, and 218.5;

6 9. As to the Tenth Cause of Action:

- 7 a. For civil penalties as provided for in the Labor Code for each enumerated
- 8 violation in an amount to be proven at trial;
- 9 b. For those Labor Code sections, the violation of which there is no civil penalty
- 10 provided, the default penalty provided in Labor Code section 2699(f): for any
- 11 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
- 12 period; For any subsequent violation, two hundred dollars (\$200) for each
- 13 aggrieved employee per pay period;
- 14 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- 15 d. For any other remedies as allowed by law and/or deemed appropriate by the
- 16 Court;

17 10. For such other and further relief as this Court may deem just and proper,

18 including, but not limited to:

- 19 a. Wages as proved at trial;
- 20 b. Injunctive and Declaratory relief;
- 21 c. Attorney's fees and costs as provided for by law; and
- 22 d. Interest.

23

24 Dated: November 15, 2023

Shimoda & Rodriguez Law, PC

25

26 By: *Brittany Berzin*

27 Galen T. Shimoda

28 Justin P. Rodriguez

 Brittany V. Berzin

 Attorneys for Plaintiffs

Escobar Cabrera, et al. v. Mike McCall Landscape, Inc., et al.
Sacramento County Superior Court of California 23CV005083

**PROOF OF SERVICE — CCP §§ 1013a and 2015.5
and California Rules of Court, Rule 1.21 and Rule 2.150**

I, Shaniya Baird, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On November 20, 2023, I served the following documents on the party below:

• **FIRST AMENDED COMPLAINT FOR DAMAGES**

Jason J. Granskog (SBN: 180930) Bowles & Verna LLP 2121 North California Boulevard, Suite 875 Walnut Creek, California 94596 Phone: (925) 935-3300 Facsimile: (925) 935-0371 Email: jgranskog@bowlesverna.com tohl@bowlesverna.com	
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☐ [] [By Certified Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Salt Lake City, Utah addressed as set forth above.

☐ [] [By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

☒ [XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown above. No error was reported by the e-mail service that I used.

☐ [] [By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service: _____.

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 20, 2023, at Salt Lake City, Utah.

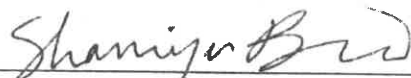

Shaniya Baird

Exhibit C



Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd.
Suite #120
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

July 18, 2023

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Salvador Escobar Cabrera, et al. v. Mike McCall Landscape, Inc., et al.*

Dear Labor Commissioner,

As counsel for Salvador Escobar Cabrera and Juan Escobar Cabrera (“Plaintiffs”), I am writing to provide you and the following “employers” notice pursuant to California Labor Code section 2699.3:

Mike McCall Landscape, Inc.
4749 Clayton Road
Concord, California 94521

Tamela Mosca
1542 N. El Camino Dr.
Clayton, California 94517

Mike McCall
407 Brigham Ln.
Danville, California 94521

Mark Tate
535 Garland Way
Brentwood, California 94513

We are setting forth the “facts and theories” to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Mike McCall Landscape, Inc., Mike McCall, Tamela Mosca, and Mark Tate (“Defendants”). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiffs and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: all non-exempt employees who have, or continue to, work for Defendants in California from one (1) year prior to the date of this letter to the present. Plaintiffs are clearly entitled to bring a Private Attorneys General Act (“PAGA”) claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal. App. 5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

Plaintiffs Salvador Escobar Cabrera and Juan Escobar Cabrera worked for Defendants in California during the claim period as non-exempt employees. Aggrieved Employees also



worked for Defendants in California during the claim period as non-exempt employees. Defendants failed to accurately record Plaintiffs' and Aggrieved Employees hours worked. Defendants did not accurately record employees' actual start and end times or the actual start and end times of meal periods, to the extent any were taken. In addition, Defendants shaved time off of Plaintiffs' and Aggrieved Employees' hours worked and automatically deducted forty-five minutes for lunch each day even when meal periods were not taken or, if taken, they were less than forty-five minutes. These practices resulted in unpaid minimum and overtime wages.

Plaintiffs and Aggrieved Employees worked on prevailing wage jobs and non-prevailing wage jobs. Plaintiff and Aggrieved Employees also performed worked over eight (8) hours in a day and/or forty (40) hours in a week, earning overtime. When employees worked on prevailing wage and non-prevailing wage jobs within the same workday and/or workweek, Defendants did not correctly incorporate the value of the prevailing wage rates into Plaintiffs' and Aggrieved Employees' regular rates of pay for the purpose of calculating overtime wages for non-prevailing wage overtime hours. Defendants also paid Plaintiffs and Aggrieved Employees paid sick time when they worked on prevailing wage and non-prevailing wage jobs within the same day or workweeks without correctly incorporating the value of prevailing wage rates into Plaintiffs' and Aggrieved Employees' regular rates of pay.

Defendants did not authorize and permit Plaintiffs and similarly situated employees to take all meal and rest periods owed to them. Defendants employed Plaintiffs and similarly situated employees for work for periods of more than five hours without providing them an off-duty meal period of at least 30 minutes. Defendants did not have a policy or practice to provide Plaintiffs and similarly situated employees with second meal periods when they worked shifts longer than ten (10) hours. Defendants employed Plaintiffs and similarly situated employees for periods of more than six (6) hours without providing a second ten (10) minute rest period. Defendants also did not have a policy or practice to provide Plaintiffs and similarly situated employees with a third rest period when they worked shifts longer than ten (10) hours. Defendants did not pay Plaintiffs and similarly situated employees all missed meal and rest period premiums they were owed.

Plaintiffs and Aggrieved Employees worked on public works jobs during their employment for which they should have been paid prevailing wages. Plaintiffs and Aggrieved Employees also worked over eight (8) hours in a day and/or forty (40) hours in a week on these jobs incurring overtime. However, Defendants failed to pay Plaintiffs and Aggrieved Employees all prevailing wages and prevailing wage overtime wages they were entitled to.

Defendants required Plaintiffs and Aggrieved Employees to use their personal cellphones for work to communicate with Defendants' management. Defendants also required Plaintiffs and Aggrieved Employees to travel to different job sites that required them to drive routes that incurred bridge tolls. Defendants did not have any policy or practice to reimburse Plaintiffs and Aggrieved Employees for these expenses.



Due to the practices and policies outline above, Defendants did not provide Plaintiffs and Aggrieved Employees with accurate wage statements. For example, the wage statements did not include accurate gross and net wages earned, total hours worked by the employee, the inclusive dates of the period for which the employee is paid, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, including but not limited to rates and corresponding hours for prevailing wages, minimum and overtime wages, paid sick time, and meal and rest period premiums.

At the time of Plaintiffs' and Aggrieved Employees' termination or separation they had wages owed to them, including minimum wages, overtime wages, prevailing wages, used but not fully paid sick leave wages, and meal and rest period premiums. To date, these wages remain unpaid.

B. ALLEGATIONS AND CHARGES

Count One – Violation of Labor Code §§ 510, 1194, 1815; IWC Wage Order 5, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiffs and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiffs and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Labor Code section 1815 requires contractors to pay employees on public works jobs 1 ½ times the basic rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

Count Two – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 5, § 4 (Failure to Pay Minimum Wages)

During the period Plaintiffs and Aggrieved Employees were employed by Defendants they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. *See, e.g.*, IWC Wage Order MW-2019; IWC Wage Order No. 5, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did not pay Plaintiffs and Aggrieved



Employees for all hours worked. Thus, Plaintiffs and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.

Count Three – Violation of Labor Code §§ 1171, 1774, 1775 (Failure to Pay Prevailing Wages)

During the period Plaintiffs and Aggrieved Employees were employed by Defendants they were entitled to be paid a prevailing wage for all work performed on public works projects. *See Cal. Lab. Code §§ 1771, 1774.* For the reasons stated above, Defendants did not pay Plaintiffs Aggrieved Employees all prevailing wages owed to them. This is against the law.

Count Four - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 5, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 5, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 5, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiffs and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendants also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

Count Five – Violation of Labor Code § 226.7 and Wage Order No. 5, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 5, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiffs and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendants also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

Count Six – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the



employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee . . .” For the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiffs and Aggrieved Employees. This is in violation of the law.

Count Seven – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including minimum wages, overtime wages, prevailing wages, paid sick time, and meal and rest period premiums, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiffs and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

Count Eight – Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Defendants failed to pay any reimbursements for personal cellphone use and bridge tolls incurred by Plaintiffs and Aggrieved Employees. This was in violation of the law.

Count Nine – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf on an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendants, by and through Defendants agents, violated Plaintiffs and Aggrieved Employees’ rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated



statutes therein. Mike McCall, Tamela Mosca, and Mark Tate were officers, directors, shareholders, and/or managing agents of Mike McCall Landscape, Inc. responsible for the violations stated herein as they were in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.

Count Ten – Violation of Labor Code §§ 226.3, 1174, 1812, 1198 and IWC Wage Order No. 5, § 7(A) (Failure to Maintain Accurate Records)

Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation. Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendants failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Plaintiffs and Aggrieved Employees' wage records and hours worked. Labor Code section 1198 provides the standard conditions of labor fixed by the commission shall be the standard conditions of labor for employees. The records requirement in Wage Order No. 5, § 7(A) is a "standard condition of labor fixed by the commission." See Cal. Labor Code § 1198. It provides, "Every employer who has control over wages, hours, or working conditions shall keep accurate information with respect to each employee, including ... time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded ... Total hours worked during the payroll period and applicable rates of pay..." See Wage Order No. 5, § 7(A). Defendants failed to keep accurate records in compliance with Wage Order No. 5, § 7(A) and Labor Code § 1198. This was against the law.

Labor Code section 1812 requires every contractor and subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the public work. Defendants failed to maintain accurate records of Plaintiff's and Aggrieved Employees' actual hours worked. This was against the law.

Count Eleven – Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked that begins to accrue at the commencement of employment. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so

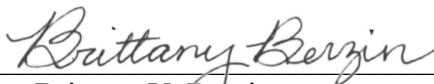


that an employee has no less than twenty-four (24) hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. An employer may limit the use of sick leave to either twenty-four (24) hours or the equivalent of three (3) days, whichever is greater, during a year period. However, employers using an accrual method rather than a lump sum method must allow employees to accrue up to forty-eight (48) hours or the equivalent of six (6) days at any given time. Employers must authorize employees to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy Families Act of 2014 (“HWHFA”) for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. Any sick leave taken must be paid at the employee's regular rate of pay. For the reasons state above, Defendants failed to provide Plaintiffs and Aggrieved Employees with sick leave meeting the requirements set forth in HWHFA. Plaintiffs will be seeking equitable, injunctive, and restitutionary relief to remedy these violations.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda & Rodriguez Law, PC

By: 
Brittany V. Berzin

BVB:sb

cc: Client via e-mail

Escobar Cabrera, et al. v. Mike McCall Landscape, Inc., et al.

**PROOF OF SERVICE — CCP §§ 1013a and 2015.5
and California Rules of Court, Rule 1.21 and Rule 2.150**

I, Shaniya Baird, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On July 18, 2023, I served the following documents on the party below:

- Private Attorney General Act Letter

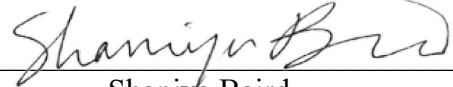
Mike McCall Landscape, Inc. 4749 Clayton Road Concord, California 94521	Tamela Mosca 1542 N. El Camino Dr. Clayton, California 94517
Mike McCall 407 Brigham Ln. Danville, California 94521	Mark Tate 535 Garland Way Brentwood, California 94513

[XXX] [By Certified Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Salt Lake City, Utah addressed as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:_____.

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 July 18, 2023, at Salt Lake City, Utah.



Shaniya Baird

Exhibit D

DECLARATION OF LISA MULLINS

1
2
3 1. I am a resident of the United States of America and am over the age of 21. I am the
4 President for ILYM Group, Inc., (herein after referred to as “ILYM Group”), a professional class action
5 services provider. I am preparing this declaration at the request of Plaintiff’s Counsel. I have personal
6 knowledge of the facts herein, and, if called upon to testify, I could and would testify competently to such
7 facts.

8 2. ILYM Group has extensive experience in disseminating class action notices and
9 administering class action settlements, including direct mail services, telephone, and web-based support,
10 database management, opt-out processing, and settlement fund distribution services for class actions
11 ranging in size from 26 to 4.5 million Class Members. Attached hereto, as **Exhibit A**, is a true and correct
12 copy of ILYM Group’s current CV, reflecting our primary competencies as they relate to class action
13 administration. ILYM Group maintains the highest level of confidentiality. The class data and all forms
14 of communication received by ILYM Group, Inc. will be held in strict confidentiality and will not be
15 disclosed. ILYM Group, will set up a login for Defense Counsel to transmit the class data through our
16 encrypted secure portal. Attached hereto, as **Exhibit B** is ILYM Group’s Security Summary and Protocol.
17 ILYM Group is insured with E&O and Cyber Insurance policies. ILYM Group is insured with E&O
18 Insurance policies up to \$2,000,000 per incident and Cyber Insurance policies up to \$5,000,000 per
19 incident.

20 3. ILYM Group has never had any financial interests in nor affiliation with the parties or
21 counsel in the *Salvador Escobar Cabrera, et al v. Mike McCall Landscape, Inc.* matter.

22 4. If appointed by the Court to disseminate the class notice in this case, ILYM Group’s duties
23 will include but not limited to: (a) conducting address traces to locate class member addresses as necessary;
24 (b) mailing the class notice to the class members; (c) handling inquiries from class members concerning
25 the class notice; and (d) performing other such duties as the parties and/or the Court may direct.

26 5. Upon appointment, ILYM Group will provide a mailing address and toll-free telephone
27 number to receive correspondence and inquiries from class members. After receiving the class data file
28 from Defendant, which should contain the class members’ names, last known addresses, and social security

1 numbers, ILYM Group will upload the data into our database and check for duplicates and other possible
2 discrepancies.

3 6. As part of the preparation for mailing the class notice, ILYM Group will process class
4 members' names and addresses against the National Change of Address ("NCOA") database, maintained
5 by the United States Postal Service ("USPS"), for the purpose of updating and confirming the mailing
6 addresses of the class members before mailing of the class notice and opt-in form. To the extent an updated
7 address is found in the NCOA database, ILYM Group will use the updated address for mailing the class
8 notice. If ILYM Group does not locate an updated address in the NCOA database, it will use the original
9 address provided by Defendant for mailing the class notice.

10 7. Should any class notices be returned to ILYM Group's office as undeliverable, ILYM
11 Group will attempt to locate an updated address using the NCOA database and/or other skip trace efforts
12 and will promptly re-mail the class notice.

13 8. Prior to sending out the notice in English & Spanish, ILYM Group will fill in the specific
14 date for the deadline so that all class members will be apprised of exactly when all applicable forms will
15 be due, depending on the deadlines set by the Court, i.e., 60-day Notice period to opt-out, dispute or file
16 an objection. At the expiration of the deadline, ILYM Group will inform all parties as to the number and
17 name of those individuals who filed a timely opt-out, dispute or objection.

18 9. ILYM Group's Disbursement Process will include but not limited to; (a) applying for the
19 case EIN; (b) establishing Qualified Settlement Fund ("QSF") Escrow Account), with administering tasks
20 including but not limited to overview and reconciliation of account; (c) calculating the individual
21 settlement amounts; (d) preparing, administering and distributing settlement award checks to the
22 Participating Class Members, including necessary tax forms (W2 and/or 1099); (e) calculating and
23 withholding all applicable state and federal taxes; and (f) performing other such duties as the Parties and/or
24 the Courts direct. The above services are included in ILYM Group's initial quote. Attached hereto, as
25 **Exhibit C**, is a true and correct copy of ILYM Group's capped quote for this matter.

26 10. ILYM Group's fees are charged: hourly, fixed & per person. No additional charges will be
27 incurred unless the class size increases, or additional services are requested. ILYM Group's fees associated
28 with the administration of this settlement is: **\$12,850.00**.

1 I declare, under penalty of perjury under the laws of the United States of America and the State
2 of California that the foregoing is true and correct. Executed this 21st day of June 2024, at Tustin,
3 California.

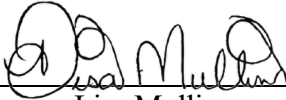
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EXHIBIT “A”

Overview of Our Firm:

ILYM Group, Inc is a class action administration, legal notification and direct media outlets firm. With over 14 years of experience, our primary commitments are to client satisfaction, cutting edge technology and data management security, seamless case management and delivery of case expectations. Because, of our adherence to these commitments, ILYM Group, Inc is a one of the fastest growing, Woman Owned Business (NAPW), in the industry and is becoming the go-to firm for class action administration and legal notification. ILYM Group, Inc works with the top defense and plaintiff firms across the United States.

AREAS OF EXPERTISE:

- Wage and Hour
- FLSA
- Insurance and Health Care
- Consumer
- Finance
- Employment and Labor
- Securities
- Antitrust
- TCPA

Malta vs. Wells Fargo Home Mortgage Inc.

- TCPA Case with a class size of 5,200,000.

Gerardo Mojica vs. Compass Group USA, Inc.

- Wage & Hour Case with a class size of 22,573

Jacqueline Jones vs. I.Q. Data International, Inc.

- TCPA Case with a class size of 93,993. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 93.82% of the Class that did not have a name or address.

Grinder, et al. v. Clark County Collection Service, LLC.

- TCPA Case with a class size of 15,659. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 97% of the Class that did not have a name or address.

Kimberly Roberts, et al. v. T.J. Maxx of CA, LLC, et al.

- Wage & Hour Case with a class size of 82,549.

Reza Barani vs. Wells Fargo Bank, N.A.

- TCPA Case with a class size of 82,874. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 87.84% of the Class that did not have a name or address.

Blaise Picchi et al., vs. World Financial Network Bank, et al.

- TCPA Case with a class size of 856,507. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 93.21% that did not have a valid address associated with the contact record.

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

ILYM Group, Inc. is operational 24/7 delivering true client and class member availability. Our call center is open 24/7/365 days a year, even holidays and is full digital, automated and multilingual. ILYM Group Inc.'s mail and media center is a state-of-the-art facility, fully digital and USPS integrated. We can accommodate cases of any size, from ten class members to multi-millions. ILYM Group, Inc. prides itself on its commitment to service, quality, value pricing and availability. We've committed ourselves to being the best Class Action Administration and Notification Company in our industry. Through our years of experience, ILYM Group, Inc. is dedicated to exceeding our client's expectations.

PRE-SETTLEMENT CONSULTATION

- **Administration Consultation:** Meeting to determine objectives and expectations by both parties. All reporting and responsibilities will be agreed upon as will the seamless process to access data. We will also discuss the opportunities to identify class members with the proposed print and web-based media for optimum reach. Additionally, all expectations and delivery of those results will be planned for and mapped accordingly.

MAILING AND NOTIFICATION

- **Fulfillment and Correspondence:** All provided settlement information will be published via United States Postal Service (USPS first class standards) to the proposed mailing class. Notifications will include a Claim ID and how to respond, or Opt-Out, based on the stipulations.
- **Reverse Lookup:** A confidential reverse phone or reverse cell lookup will provide; owner's name, location, address history, carrier, phone type (landline or cell phone) and more. Our reverse lookup is powered by an extensive database which includes hundreds of millions of cell phone, landline, residential and unlisted number. Our software collects data from multiple data sources and carriers across the US. Our average "hit ratio" ranges from 93% - 98%.
- **Creating Class Database:** All Data is verified and filtered to eliminate duplication against the United States Postal Service (USPS) National Change of Address (NCOA) database. ILYM Group, Inc. will also certify and validate with the Coding Accuracy Support System (CASS) and Track Your Class (TYC) for zone delivery.
- **Claim Forms:** ILYM Group, Inc. will email all claim forms, whenever possible, to have accurate reporting and tracking of all class requests. Emails will contain full text claim forms.
- **Translations:** When needed, ILYM Group, Inc. will translate notices to any language needed to reach Class members.
- **Remails:** Returned mail will be scanned, re-verified and re-mailed. All returned mail is data warehoused and reported to both parties' counsels in a weekly report.

MEDIA & INTERNET BANNER ADS

Notice Publication

- **Legal Notices:** ILYM Group, Inc. can provide a Media Proposal to maximize reach based on quantitative and qualitative methodologies.
- **Electronic Publication (Banner Ads):** ILYM Group, Inc. will utilize Internet Banner Noticing efforts and web technologies for maximum reach via the World Wide Web.

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

- **Electronic Mail Notices:** ILYM Group, Inc. can email an estimated number of class members a full text notice. We are compliant with all search engines and Internet Service Providers (ISP) so that our emails are always “White List” accepted with minimal returns.
- **Reach:** Every case has its own proposed reach and exposure percentage. We filter, verify and scrub the data to improve reach results.
- **Services Included:** Analysis, Documentation, Research and Methodologies, Execution and Reporting.

PROJECT MANAGEMENT

- **Case Notification, Maintenance and Management:** ILYM Group, Inc.’s Senior Project Managers will provide all Account Management, Pre-Consultation to Case Conclusion, Reporting and Claims Processing. Design, negotiation and implementation, upon approval, of all forms and notices, all distribution reporting and filings with the court.
- **Claims Processing:** All claims can be submitted by USPS, Internet, Fax, and Email or Online submission. Claims will be processed and recorded with matching ILYM database ID's. E-claims will have corresponding records of intake. All deficient claims will be notified via USPS and make provisions for class member to re-submit claims.
- **Call Center:** ILYM Group, Inc. will support class members with a toll-free number to get the most up-to-date case settlement information. Customer service representatives will be available 24/7/365 as will recorded messages.
All class members are given the options to best serve their needs and to receive case information.
- **Internet Support:** Class members can log on to a provided website and view, print or submit information and claim forms regarding the settlement. Frequently Asked Questions (FAQ’s) will be provided as well. Class members may download the claim form with mailing and fax instructions provided on the form.
- **Objection and Request for Exclusion:** All objections and request for exclusion, opt-out, will be data warehoused, dated and reported. Postmarks will serve for exclusion dating and will be forwarded to both counsels’ no more than 5 days post submission. Objection will be reviewed by ILYM Group, Inc. to determine the timeliness and basis of the objection. All information will be forwarded to both parties counsel, along with any representation information from the class member, within 5 days.

DATA ADMINISTRATION AND NETWORK SECURITY

- **Network Security:** All provided data is encrypted, stored and hosted in a Tier 4, SAS70 certified environment.
- **Database Administration:** To be developed with all electronically provided data. Class members will be assigned ILYM Group, Inc. internal tracking ID’s to ensure all collected member data coincides with all received claims.

DISTRIBUTION AND SETTLEMENT FUNDING

- ***Distribution and Management:*** Upon receipt of settlement funds, ILYM Group, Inc. will open a QSF Account for proceeds of the Gross Settlement Payment. The deposited funds will then be managed per the Settlement Agreement. All funds will be settled with class members and counsel along with all federal and state income tax reporting.
- ***Check Printing and Mailing:*** Claims processed, quantified and approved by clients, will be processed for distribution. All checks will be printed and mailed via USPS first class standards. ILYM Group, Inc. will reissue checks in accordance with the Settlement Agreement.
- ***Preparation, Filing and Reporting of Taxes:*** ILYM Group, Inc. will ensure taxes are filed in accordance to all federal, state and local employment tax returns. All taxes associated with the settlement will be paid on time to tax authorities. All filings and returns (e.g., 1099s, W-2s, etc.) will be done properly and timely with the appropriate authorities. All QSF steps and obligations with federal, state and/or local law will be followed.

CASE CONCLUSION

- ***Data Manager Final Report:*** All database and electronic documentation will be sent in reports weekly and at the conclusion of the Administration engagement. Call center activity, e-claims, mailed, and faxed claims will be included in all reporting.
- ***Project Manager Final Report:*** All case and class related information will be provided on a weekly basis and at the conclusion of the Administration engagement. Mailing and media final analysis, exclusions, objections, and all other claims processing outcomes, status reports and final court documentations will be included.
- ***Affidavits:*** ILYM Group, Inc. will provide all affidavits in support of analysis and media reach, final approvals and settlement. Expert Testimony and Media Methodologies will be determined.
- ***Document Retention:*** Unless otherwise directed, ILYM Group, Inc. will destroy all undeliverable notices on the effective date of the settlement or when the case is no longer subject to appeal. ILYM Group, Inc. will correspond for one year after the final distribution or until the case is no longer subject to appeal.

EXHIBIT “B”

ILYM Group, Inc. (ILYM) in conjunction with our security and Information Technology (IT) vendor(s), maintains the highest level of confidentiality of class member data. The class data and all forms of communication received by ILYM, will be held in strict confidentiality and will not be disclosed. Data provided to the administrator for purposes of notice, settlement, or award administration will be used solely for settlement implementation and for no other purpose. ILYM will set up a login for Defense Counsel to transmit the class data through our encrypted secure portal. ILYM processes adhere to the Settlement Administration Data Protection Checklist in the Northern District of California and are summarized in the tables below.

Technical Controls

Firewalls and intrusion detection/prevention systems	Yes
Endpoint Detection and Response (EDR) Systems	Yes
Complex Password Requirements	Yes
MultiFactor Authentication for Access to Systems and Data	Yes
Malware Protection and AntiVirus	Yes
Vulnerability Scanning/Pen Testing	Yes
Data Encryption	Yes
Key Management for access to encrypted Data	Yes
Access only provided on need-to-know basis	Yes
Security Operations Center (SOC)	Yes
Managed Detection and Response (MDR)	Yes
Security Information and Event Management (SIEM)	Yes
Software Defined Global Network (SGN) with next gen firewall	Yes

Administrative Policies

Personnel and support staff risk assessment and management, including pre-hire background checks and screening processes	Yes
Personnel and support staff required to enter into non-disclosure and confidentiality agreements	Yes
Access controls to systems and data, including guidance for granting, modifying, and reviewing access rights	
Information security and privacy policy training, including policy review, best practices, and data security	Yes
No remote access to systems for Employees	No
Exit interviews/confirmation that terminated/departed employees are immediately cut off from access	Yes
Robust audits of data privacy policies by third-party vendors	Yes
Accreditation in accordance with ISO 27001 and SOC2 (among the industry standards listed below)	Compliant
Disclosure of external certifications and any notice of expiration	Yes

Crisis and Risk Management

Incident response/disaster plan for immediate response to security incidents such as data breach.	Yes
Process and timing for notification to attorneys, claimants, and other stakeholders of a data breach and consideration of resources and/or remedies to provide thereto	Yes
Vendor management program that determines and defines requirements to manage risk associated with outsourcing	Core Vendors are limited and have been vetted. New program being implemented as part of SOC 2

Physical Access Controls

Physical Access Security Security Guards Access Cards to facilities with assignment of identification card subject to approval and review Logs of Access	Logs and “codes” No cards – just codes No security guards Logs are kept
Alarm Systems	Yes
CCTV recording Systems	Yes

Data Collection and Retention

Minimization of collection of personally identifiable information, e.g., social security numbers and banking information	Yes
Data collection only required to extent necessary for settlement administration	Yes
Various methods for ensuring data protection and security of Data classification (including implementation of appropriate safeguards to protect from theft, loss, and/or unauthorized disclosure, use, access, destruction) Compliance with applicable laws and regulations (see below) Secure data transfer	Yes

Data Destruction

Preservation of data only for so long as required for administration of the settlement and any relevant reporting required following the payments or distributions	Yes
Secure data destruction (e.g., 6 months – 1 year or when no longer required)	Yes
Physical media (e.g., paper, CDs) shredded or destroyed to point where they cannot be reconstructed	Yes
Destruction of all derivative copies and/or back-ups	Yes

Applicable Laws, Standards, and Other Regulation

Industry standards: National Institute of Standards and Technology (NIST), HIPAA, FISMA, System and Organization Controls (SOC1 and SOC2) or more advanced assessment, ISO 27001	Yes
Local, national, international privacy regulations (including CCPA)	Yes

Ethical Rules

Administrative policies and/or employee handbook incorporating commitment to ethical rules (e.g., company, court ethical rules) setting forth standards of ethical and legal behavior	Yes
Enforcement clauses, violation resulting in disciplinary action including and up to termination of employment	Yes

Customer Service Measures

Description of settlement website and posting thereto of relevant privacy policies or statements (including portal for reporting suspected loss of confidential data submitted with claim)	Yes
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Explanation of role of claims administrator and how to prevent phishing (e.g., clear indication that administrator will not request confidential information by e-mail and how to identify a valid e-mail sent from the administrator)	Yes
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EXHIBIT “C”

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Salvador Escobar Cabrera, et al v. Mike McCall Landscape, Inc.
Friday, June 21, 2024

Requesting Attorneys Name:	Renald Konini
E-Mail:	rkonini@shimodalaw.com
ILYM Contact:	Lisa Mullins
E-Mail:	Lisa@ilymgroup.com
Contact Number:	714.878.8836

Estimate For Administrative Solutions: Class & PAGA

KEY ASSUMPTIONS	
Total Number of Class Members	850
Estimated Percentage of Remails	15%
Certified Spanish Translation	Yes
ILYM Group Static Website	No
Case Duration (Years)	1

Summary Estimate: ILYM Group Fees & Expenses

Case Startup:	\$650.00
Project Management & Noticing:	\$2,335.00
Notification & Mailing:	\$2,528.50
Distribution (Includes EIN, Bank Acct * /QSF Setup):	\$5,631.50
Case Conclusion:	\$1,705.00

Capped ILYM Fees & Expenses: \$12,850.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Salvador Escobar Cabrera, et al v. Mike McCall Landscape, Inc.

Friday, June 21, 2024

Requesting Attorneys Name: Renald Konini

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	2	\$300.00
Programming of Class Database	Hourly	\$175.00	2	\$350.00

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

Subtotal \$650.00

PROJECT MANAGEMENT & NOTICING				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	4	\$480.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	3	\$210.00
Staff Hours for Processing Opt-Outs, Disputes & Objection(s)	Hourly	\$70.00	3	\$210.00
Report Processing	Hourly	\$70.00	3	\$210.00
NCOA	Flat Rate	\$225.00	1	\$225.00
Toll Free Customer Service Representative	Flat Fee	\$250.00	1	\$250.00
Certified Spanish Translation	Flat Fee	\$750.00	1	\$750.00
Weekly Reports	Flat Rate	\$750.00	1	Waived

Subtotal \$2,335.00

NOTIFICATION/MAILING				
Fulfillment of Notice, English & Spanish	Per Piece	\$1.50	850	\$1,275.00
USPS First Class Postage	Per Piece	\$0.88	850	\$748.00
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$2.00	128	\$255.00
Storage, Photocopies, Deliveries	Flat Fee	\$250.50	1	\$250.50

Subtotal \$2,528.50

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Salvador Escobar Cabrera, et al v. Mike McCall Landscape, Inc.

Friday, June 21, 2024

Requesting Attorneys Name: Renald Konini

Activity	Rate Type	Unit Cost	Volume	Amount
DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	6	\$900.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	6	\$750.00
Check, Stub & Release - Print & Mail (W-2/1099)	Per Check	\$1.00	850	\$850.00
USPS First Class Postage	Per Piece	\$0.64	850	\$544.00
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$1.50	85	\$127.50
Preparation of Taxes	Hourly	\$120.00	8	\$960.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

*Additional Bank fees may apply

Subtotal \$5,631.50

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	3	\$300.00
Project Manager Final Reporting	Hourly	\$120.00	4	\$480.00
Process Unclaimed Funds to cy pres	Flat Fee	\$550.00	1	\$550.00
Declaration	Hourly	\$125.00	3	\$375.00

Subtotal \$1,705.00

Capped ILYM Fees & Expenses: \$12,850.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

Exhibit E

Date	Description	Amount
7/19/2023	Administration Fee - Phone, Fax, Scan, copying, Westlaw Legal Research Fee	\$500.00
7/19/2023	Certified Mail - PAGA Letters to Employers	\$35.08
7/19/2023	Payment to LWDA - PAGA Filing Fee	\$75.00
7/28/2023	Affordable Legal Service Fee - Mike McCall Landscape inv 193698-01	\$113.55
8/2/2023	One Legal Service Fee - \$1000 complex fee, \$435 complaint fee, \$144.25 filing fee order 20829221	\$1,579.25
8/16/2023	One Legal Service Fee - Proof of service order 20918573	\$83.39
11/16/2023	One Legal Service Fee - Stipulation order 21645560	\$122.51
12/26/2023	One Legal Service Fee - Amended Complaint Order 21671040	\$101.92
1/25/2024	Mediation fee	\$4,125.00
3/20/2024	One Legal Service Fee - proof of service 22487113	\$16.88
3/20/2024	One Legal Service Fee - notice 22480943	\$16.88
4/17/2024	One Legal Service Fee -Joint Case management Statement 22693367	\$16.88
6/25/2024	One Legal Service Fee -Joint Case management Statement 23198990	\$16.88
Anticipated	One Legal Fee - Motion for Preliminary Approval of Settlement	\$125.00
Anticipated	One Legal Fee - Joint Case Management Conference Statement	\$25.00
Anticipated	One Legal Fee - Motion for Final Approval of Settlement	\$125.00
Anticipated	One Legal Service Fee - Notice of Entry of Order	\$25.00
Anticipated	One Legal Fee - Compliance Declarations	\$25.00

TOTAL: \$7,128.22

Exhibit F

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

SALVADOR ESCOBAR CABRERA and JUAN
ESCOBAR CABRERA, individually and on
behalf of all other similarly situated employees,

Plaintiffs,

vs.

MIKE MCCALL LANDSCAPE, INC., a
California Corporation; and DOES 1 to 100,
inclusive,

Defendant.

Case No. 23CV005083

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: all individuals who have, or continue to, work for Defendants in California as non-exempt employees from July 20, 2019, to [REDACTED] (the “Class Members”).

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

You are receiving this notice pursuant to an order from the Sacramento County Superior Court (“Court”) granting Plaintiffs’ motion for preliminary approval of a Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement” or “Settlement”) as fair, reasonable, and adequate. The Settlement was entered into between Plaintiffs Salvador Escobar Cabrera and Juan Escobar Cabrera (“Plaintiffs” or “Class Representatives”), and Defendant Mike McCall Landscape, Inc. (“Defendant”), on behalf of Class Members as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant’s records indicate you fall within the definition of “Class Member.” Defendant’s records also indicate that you worked [REDACTED] weeks during the applicable Class Period (as defined below), which means your total share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court’s order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On July 20, 2023, Plaintiffs filed a Complaint against Defendant in the Sacramento County Superior Court of California on behalf of themselves and Class Members. The term “Action” means this putative class action pending in Sacramento County Superior Court, Case No. 23CV005083. The Class Period is July 20, 2019, to [REDACTED] (the “Class Period”).

In the Action, Plaintiffs sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of themselves, Class Members, and Aggrieved Employees. Plaintiffs alleged that Defendant violated California law by 1) failing to pay overtime wages, 2) failing to pay minimum wages, 3) failing to pay prevailing wages, 4) failing to provide meal periods or pay premiums in lieu thereof, 5) failing to provide rest periods or pay premiums in lieu thereof, 6) failing to provide accurate wage statements, 7) failing to pay final wages, 8) failing to pay reimbursement for expenses, 9) failing to maintain accurate wage records, 10) failing to pay sick leave, 11) engaging in unfair competition, and 12) committing PAGA violations. Defendant has denied all of Plaintiffs’ allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process.

Despite agreeing to and supporting the Agreement, Defendant continue to deny all allegations and claims. Defendant has entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all individuals who have, or continue to, work for Defendants in California as non-exempt employees from July 20, 2019, to [REDACTED]. The Agreement also applies to Aggrieved Employees, which are defined as all non-exempt employees who have, or continue to, work for Defendants in California from July 18, 2022, to [REDACTED]. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself (“opt out”) from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant has agreed to pay a total sum of Six Hundred Eighty-Five Thousand Dollars (\$685,000) (“Gross Settlement Amount”). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys’ fees not to exceed 35% of the Gross Settlement Amount, attorneys’ costs not to exceed \$10,000, Settlement Administrator Costs estimated not to exceed \$20,000, Class Representatives’ Enhancement Payments of \$10,000 each, and \$40,000 for alleged PAGA penalties (the “PAGA Payment”), which will result in a “Net Settlement Amount” for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member’s share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$40,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees.

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment (“Individual Settlement Amount”) is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (*i.e.*, those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees’ allocations for the PAGA claim.

B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that the amount payable to eligible Class Members from the Net Settlement Amount will be allocated and paid as 80% for disputed interest, statutory penalties, and other non-wage damages for which an IRS Forms 1099-MISC and 1099-INT will issue and 20% for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member’s share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member’s individual share of the Net Settlement Amount. Each Aggrieved Employee’s share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee’s individual share. The PAGA Claim Period is defined as July 18, 2022, to [REDACTED]. Defendant’s records indicate that you worked [REDACTED] weeks during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant's Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than [redacted]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released [1.30 text].

Aggrieved Employees will be deemed to have released [1.31 text].

The individuals released ("Released Parties") include Defendant, as well as Defendant's officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members and/or Aggrieved Employees can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if they have questions about the released claims and what they mean.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from being a Class Member if you request this by [redacted]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (i.e., "opt out") by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (i.e. *Escobar Cabrera, et al. v. Mike McCall Landscape, Inc.*, 23CV005083); (d) be signed; and (e) be post-marked no later than [redacted]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [redacted], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not receive their share of the Net Settlement Amount. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by submitting an objection. You **cannot**

ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. You may submit a written objection, which should (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (*i.e. Escobar Cabrera, et al. v. Mike McCall Landscape, Inc.*, 23CV005083); (e) be signed; and (f) be post-marked no later than [REDACTED]. Written objections must be sent to the Settlement Administrator at the address identified in Section III.B.

Additionally, or in the alternative to sending a written objection to the Settlement Administrator, you may appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. A notice of entry of judgment will be filed with the Court and available online at <https://prod-portal-sacramento-ca.journaltech.com/public-portal/>. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and Aggrieved Employee, will release Defendant and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 22, 720 9th Street, Sacramento, California 95814, on [REDACTED] at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. To join by Zoom: <https://saccourt-ca.gov.zoomgov.com/my/sscdept22>. To join by phone: (833) 568-8864 / ID 16184738886. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representatives' Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at <https://prod-portal-sacramento-ca.journaltech.com/public-portal/>. You can also contact Class Counsel or Defendant's Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiffs

Richard T. Bowles
Jason J. Granskog
Bowles & Verna LLP
2121 N. California Blvd., Suite 875
Walnut Creek, California 94596
Telephone: (925) 935-3300
Facsimile: (925) 935-0371
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

Exhibit G

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiffs SALVADOR ESCOBAR CABRERA and JUAN ESCOBAR CABRERA
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

SALVADOR ESCOBAR CABRERA and
JUAN ESCOBAR CABRERA, individually
and on behalf of all other similarly situated
employees,

Plaintiffs,

vs.

MIKE MCCALL LANDSCAPE, INC., a
California Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 23CV005083

*Assigned for All Purposes to Hon. Lauri A. Damrell
Department 22*

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Reservation No. A-05083-001

Date: November 1, 2024

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: July 20, 2023

FAC Filed: November 20, 2023

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement (“Motion”) in the
3 above referenced case came before this Court, on November 1, 2024, at 9:00 a.m., in Department 22
4 before the Honorable Lauri A. Damrell, presiding. Plaintiffs Salvador Escobar Cabrera and Juan
5 Escobar Cabrera (“Plaintiffs”) filed this putative class action on July 20, 2023. The operative
6 Complaint alleges that Defendant Mike McCall Landscape, Inc. (“Defendant”), violated California
7 law by failing to pay overtime wages, failing to pay minimum wages, committing meal and rest period
8 violations, failing to provide accurate wage statements, failing to pay all final wages, failing to
9 reimburse business expenses, failing to pay prevailing wages, and engaging in unfair competition.
10 Plaintiffs have also alleged Defendant is liable for civil penalties under the Private Attorney’s General
11 Act (“PAGA”) based on these violations. Plaintiffs sought attorneys’ fees and costs as part of this
12 Action. Defendant denied all of Plaintiffs’ claims and denied that this case was appropriate for class
13 treatment. No class has been certified.

14 The parties have agreed to settle the class and PAGA claims. Defendant will provide monetary
15 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
16 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
17 (“Agreement” or “Settlement”). Any capitalized terms herein shall have the same meaning as set forth
18 in the Agreement. The Court, having received and considered Plaintiffs’ Motion for Preliminary
19 Approval of Class Action and PAGA Settlement, the declarations in support, the Agreement, the
20 proposed Notice of Settlement, and other evidence, HEREBY ORDERS AND MAKES
21 DETERMINATIONS AS FOLLOWS:

22 **I. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
23 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

24 The Court finds that certification of the following class for settlement purposes only is
25 appropriate under the California Code of Civil Procedure and related case law:

26 All individuals who have, or continue to, work for Defendants in
27 California as non-exempt employees from July 20, 2019, up to October 8,
28 2024.

1 The Court recognizes that the foregoing definition is for Class Member identification purposes
2 only and is not intended to capture the claims at issue or limit or alter the released claims under the
3 Agreement.

4 The Court finds that Class Members meet the ascertainability and numerosity requirements since
5 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
6 the definition and the number of Class Members would make joinder impractical. The commonality and
7 predominance requirements are met for settlement purposes since there are questions of law and fact
8 common to Class Members. The common questions of law or fact in this case all stem from Plaintiffs'
9 contentions that Defendant caused the violations outlined above by 1) failing to pay for all hours worked
10 as a result of Defendant's failure to accurately record all hours worked, 2) deducting time from
11 employees' hours worked, including deducting forty-five (45) minutes for meal periods that were shorter
12 or not received; 3) failing to correctly calculate employees' regular rates of pay when they earned
13 different rates of pay in the same week, 4) failing to authorize and permit all meal and rest periods, 5)
14 failing to keep accurate records of employee's hours worked, including start and stop times for any meal
15 periods, and 6) failing to pay all business expenses incurred, including mileage and personal cellphone
16 expenses. The PAGA, waiting time penalty, wage statement violation, and unfair competition claims
17 also derive from these violations. Additionally, Class Members seek the same remedies under state law.
18 The typicality requirement for settlement purposes is also satisfied since the claims of the Class
19 Representatives are based on the same facts and legal theories as those applicable to the class members.

20 The Court also finds that preliminarily and conditionally certifying the settlement class is
21 required to avoid each Class Member from litigating similar claims individually. This Settlement will
22 achieve economies of scale for Class Members with relatively small individual claims and conserve the
23 resources of the judicial system.

24 The Court finds that Plaintiffs Salvador Escobar Cabrera and Juan Escobar Cabrera and
25 Plaintiffs' counsel, Galen T. Shimoda, Justin P. Rodriguez, and Renald Konini of Shimoda & Rodriguez
26 Law, PC, to be adequate representatives of the settlement class. The Court appoints them as Class
27 Representatives and Class Counsel, respectively.

II. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT

The Court has reviewed the Agreement, which was submitted with Plaintiffs' Motion as Exhibit A. The Court finds, on a preliminary and conditional basis, that the Settlement is fair, reasonable, and adequate and falls within the range of reasonableness of a settlement that could ultimately be given final approval by this Court. The Court finds the Settlement was agreed upon only after extensive investigation, litigation, and arms-length negotiations by counsel experienced in complex litigation, who took reasonable steps and measures to weigh the potential value of the disputed claims against the risks of continued litigation. The Court also acknowledges that Class Members may present any objections to the Settlement at a fairness hearing approved by this Court or opt-out of being bound by the preliminarily approved Agreement. The Court preliminarily approves the Agreement and all terms therein as if stated here in full, including the \$685,000 Gross Settlement Amount.

The Court approves of ILYM Group, Inc. acting as the Settlement Administrator in this case and hereby appoints them to fulfill those duties as outlined in the Agreement.

The Court finds that an award of fees under the common fund doctrine may be appropriate in this case because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits that Plaintiffs and Class Counsel were able to negotiate on behalf of Class Members can be accurately traced as set forth in the Agreement, and the fee can be shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the Gross Settlement Amount. *See Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) ("A lawyer who recovers a common fund for the benefit of persons other than . . . her client is entitled to a reasonable attorney's fee from the fund as a whole."). The amounts allocated under the Agreement for attorney's fees and costs, Enhancement Payments to the Class Representatives, and Settlement Administrator Costs shall be included in the Notice of Settlement to enable Class Members to review and comment thereon. The Court will consider the reaction of Class Members when evaluating the reasonableness of the requested amounts at final approval. *See In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, 71 (C.D. Cal. 2005) ("the absence of objections or disapproval by class members to class counsel's fee request further supports finding the fee request reasonable"). Plaintiffs and Class Counsel are directed to provide

1 information in connection with the motion for final approval that will enable the Court to assess the
2 appropriateness of any requested fee percentage, to perform a lodestar cross check of the requested fee
3 percentage, and to quantify the amount of time spent by Plaintiffs on this case and any further risks
4 and/or burdens incurred as a result of acting as Class Representatives. Class Counsel is also directed to
5 provide an updated declaration and itemization regarding actual litigation costs incurred. The
6 Settlement Administrator shall also submit a declaration attesting to Settlement Administrator Costs
7 incurred. The Court will review these amounts and allocations in connection with the final approval
8 hearing. To the extent the Court ultimately awards less than the amounts allocated under the Agreement
9 for attorney's fees and costs, for Enhancement Payments to the Class Representatives, and/or Settlement
10 Administrator Costs, the difference between the amounts awarded and the amounts requested shall be
11 added to the Net Settlement Amount for distribution to Participating Class Members pro rata as set forth
12 in the Agreement.

13 The Court approves of the Forty Thousand Dollars (\$40,000) PAGA Payment, which shall be
14 paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the
15 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and
16 Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to Aggrieved
17 Employees on a pro rata basis as described in the Agreement. The Court also finds that the Agreement
18 provides a recovery that creates an effective, substantial deterrent to any potential future non-
19 compliance, furthering the purpose of the Labor Code and LWDA.

20 The Court approves of the identified *cy pres* beneficiaries and distribution plan wherein any
21 checks issued to Participating Class Members and/or Aggrieved Employees that are not cashed by the
22 deadline to do so shall be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for
23 Workers' Rights. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718 (2006). No portion of the
24 Gross Settlement Amount will revert to Defendant for any reason.

25 The releases and waivers for Class Members who do not opt out of being bound by the
26 Agreement (*i.e.* Participating Class Members), Aggrieved Employees, and the Class Representatives are
27 also approved by the Court as set forth in the Agreement.
28

1 **III. APPROVAL OF THE NOTICE OF SETTLEMENT AND METHOD FOR**
2 **DISTRIBUTING THE NOTICE OF SETTLEMENT**

3 The Court finds that the proposed Notice of Settlement, attached to this Order as Exhibit 1 and
4 incorporated by reference, fairly and adequately advises Class Members of the terms of the Agreement,
5 the rights being waived, their right to opt out, the ability to dispute the number of workweeks worked
6 during the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the
7 settlement, how to file documentation in opposition to the proposed settlement, and when to appear at
8 the fairness hearing to be conducted on the date set forth below. The Court further finds that the Notice
9 of Settlement and proposed method for distribution of such notice by first class mail to each identified
10 Class Member at his or her most recent address based on a National Change of Address database search
11 from the Class Members' last known address and a skip trace on any Class Members who have the
12 Notice of Settlement returned as "undeliverable" or "not at this address" comports with all constitutional
13 requirements, including those of due process.

14 The Court also finds that because there is a strong interest in providing Class Members the
15 opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to
16 privacy rights, the sharing of employment information, including social security numbers, is not a
17 serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide Class Member
18 information to the Settlement Administrator as set forth in the Agreement, including the first and last
19 name, last known mailing address, last known telephone number, Social Security Number, start and end
20 date (if any) of employment of each Class Member and Aggrieved Employee, and any other information
21 the Settlement Administrator needs to effectuate notice to Class Members and Aggrieved Employees.
22 The Class Member information will be provided to the Settlement Administrator only, and not to
23 Plaintiffs or Class Counsel, in order to process this settlement as contemplated within the Agreement
24 and approved by this Order. The Settlement Administrator shall only use this information for the
25 purposes identified in the Agreement and shall keep this information confidential consistent with the
26 terms of the Agreement.

27 **IV. IMPLEMENTATION SCHEDULE**

28 Accordingly, with good cause shown, the Court hereby approves and orders that the following
implementation schedule be adhered to:

Last day for Defendant to provide Settlement Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts to Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
Last day for Defendant to fund settlement	Within 21 calendar days after the Effective Date
Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has funded the settlement
Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline

1 Last day for Settlement Administrator to provide
2 Parties with compliance declaration

Within 21 calendar days after settlement
check cashing deadline

3
4 **FINAL APPROVAL AND HEARING**

5 The Court hereby grants Plaintiffs' Motion and sets final approval hearing on the proposed date
6 of March 21, 2025, at 9:00 a.m., with briefs and supporting documentation to be submitted according to
7 the California Code of Civil Procedure, in this Department. Participating Class Members may object
8 and appear at the final approval hearing in person or by counsel as set forth in the Agreement.

9 If for any reason the Court does not grant final approval of the Agreement, all evidence and
10 proceedings held in connection therewith shall be without prejudice to the status quo and rights of the
11 parties to the litigation, including all challenges to personal jurisdiction and to class certification for any
12 purpose other than approving a settlement class. The parties will revert to their respective positions as if
13 no settlement had been reached at all.

14 **IT IS SO ORDERED.**

15 Date: _____

By: _____

16 Judge of the Superior Court
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Exhibit 1

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

SALVADOR ESCOBAR CABRERA and JUAN
ESCOBAR CABRERA, individually and on
behalf of all other similarly situated employees,

Plaintiffs,

vs.

MIKE MCCALL LANDSCAPE, INC., a
California Corporation; and DOES 1 to 100,
inclusive,

Defendant.

Case No. 23CV005083

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: all individuals who have, or continue to, work for Defendants in California as non-exempt employees from July 20, 2019, to [REDACTED] (the “Class Members”).

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

You are receiving this notice pursuant to an order from the Sacramento County Superior Court (“Court”) granting Plaintiffs’ motion for preliminary approval of a Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement” or “Settlement”) as fair, reasonable, and adequate. The Settlement was entered into between Plaintiffs Salvador Escobar Cabrera and Juan Escobar Cabrera (“Plaintiffs” or “Class Representatives”), and Defendant Mike McCall Landscape, Inc. (“Defendant”), on behalf of Class Members as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant’s records indicate you fall within the definition of “Class Member.” Defendant’s records also indicate that you worked [REDACTED] weeks during the applicable Class Period (as defined below), which means your total share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court’s order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On July 20, 2023, Plaintiffs filed a Complaint against Defendant in the Sacramento County Superior Court of California on behalf of themselves and Class Members. The term “Action” means this putative class action pending in Sacramento County Superior Court, Case No. 23CV005083. The Class Period is July 20, 2019, to [REDACTED] (the “Class Period”).

In the Action, Plaintiffs sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of themselves, Class Members, and Aggrieved Employees. Plaintiffs alleged that Defendant violated California law by 1) failing to pay overtime wages, 2) failing to pay minimum wages, 3) failing to pay prevailing wages, 4) failing to provide meal periods or pay premiums in lieu thereof, 5) failing to provide rest periods or pay premiums in lieu thereof, 6) failing to provide accurate wage statements, 7) failing to pay final wages, 8) failing to pay reimbursement for expenses, 9) failing to maintain accurate wage records, 10) failing to pay sick leave, 11) engaging in unfair competition, and 12) committing PAGA violations. Defendant has denied all of Plaintiffs’ allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process.

Despite agreeing to and supporting the Agreement, Defendant continue to deny all allegations and claims. Defendant has entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all individuals who have, or continue to, work for Defendants in California as non-exempt employees from July 20, 2019, to [REDACTED]. The Agreement also applies to Aggrieved Employees, which are defined as all non-exempt employees who have, or continue to, work for Defendants in California from July 18, 2022, to [REDACTED]. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself (“opt out”) from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant has agreed to pay a total sum of Six Hundred Eighty-Five Thousand Dollars (\$685,000) (“Gross Settlement Amount”). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys’ fees not to exceed 35% of the Gross Settlement Amount, attorneys’ costs not to exceed \$10,000, Settlement Administrator Costs estimated not to exceed \$20,000, Class Representatives’ Enhancement Payments of \$10,000 each, and \$40,000 for alleged PAGA penalties (the “PAGA Payment”), which will result in a “Net Settlement Amount” for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member’s share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$40,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees.

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment (“Individual Settlement Amount”) is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (*i.e.*, those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees’ allocations for the PAGA claim.

B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that the amount payable to eligible Class Members from the Net Settlement Amount will be allocated and paid as 80% for disputed interest, statutory penalties, and other non-wage damages for which an IRS Forms 1099-MISC and 1099-INT will issue and 20% for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member’s share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member’s individual share of the Net Settlement Amount. Each Aggrieved Employee’s share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee’s individual share. The PAGA Claim Period is defined as July 18, 2022, to [REDACTED]. Defendant’s records indicate that you worked [REDACTED] weeks during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant's Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than [redacted]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released [1.30 text].

Aggrieved Employees will be deemed to have released [1.31 text].

The individuals released ("Released Parties") include Defendant, as well as Defendant's officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members and/or Aggrieved Employees can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if they have questions about the released claims and what they mean.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from being a Class Member if you request this by [redacted]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (i.e., "opt out") by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (i.e. *Escobar Cabrera, et al. v. Mike McCall Landscape, Inc.*, 23CV005083); (d) be signed; and (e) be post-marked no later than [redacted]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [redacted], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not receive their share of the Net Settlement Amount. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by submitting an objection. You **cannot**

ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. You may submit a written objection, which should (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (*i.e. Escobar Cabrera, et al. v. Mike McCall Landscape, Inc.*, 23CV005083); (e) be signed; and (f) be post-marked no later than [REDACTED]. Written objections must be sent to the Settlement Administrator at the address identified in Section III.B.

Additionally, or in the alternative to sending a written objection to the Settlement Administrator, you may appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. A notice of entry of judgment will be filed with the Court and available online at <https://prod-portal-sacramento-ca.journaltech.com/public-portal/>. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and Aggrieved Employee, will release Defendant and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 22, 720 9th Street, Sacramento, California 95814, on [REDACTED] at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. To join by Zoom: <https://saccourt-ca.gov.zoomgov.com/my/sscdept22>. To join by phone: (833) 568-8864 / ID 16184738886. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representatives' Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at <https://prod-portal-sacramento-ca.journaltech.com/public-portal/>. You can also contact Class Counsel or Defendant's Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiffs

Richard T. Bowles
Jason J. Granskog
Bowles & Verna LLP
2121 N. California Blvd., Suite 875
Walnut Creek, California 94596
Telephone: (925) 935-3300
Facsimile: (925) 935-0371
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT