

1 Arrash T. Fattahi (SBN 333676)
arrash.fattahi@wilshirelawfirm.com
2 Arman A. Salehi (SBN 351112)
arman.salehi@wilshirelawfirm.com
3 Emily K. Borman (SBN 303180)
emily.borman@wilshirelawfirm.com
4 Courtney M. Miller (SBN 327850)
courtney.miller@wilshirelawfirm.com
5 **WILSHIRE LAW FIRM, PLC**
660 S. Figueroa Street, Sky Lobby
6 Los Angeles, California 90017
Telephone: (213) 381-9988
7 Facsimile: (213) 381-9989

8 Attorneys for Plaintiff
Diane De La Cruz
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CLARA**

12 DIANE DE LA CRUZ, individually, on behalf
13 of all others similarly situated, and on behalf of
14 the State of California and other aggrieved
persons,

15 *Plaintiff,*

16 v.

17 JAMES NICHOLSON ENTERPRISES dba
18 DINSMORE LANDSCAPE COMPANY, a
California corporation; and DOES 1 through 10,
19 inclusive,

20 *Defendants.*
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Case No.: 23CV421709

*[Assigned for All Purposes to the Hon.
Theodore C. Zayner, Dept. 19]*

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

Preliminary Approval Hearing:

Date: April 1, 2026

Time: 1:30 p.m.

Dept: 19

Action Filed: August 30, 2023

1 The Motion for Preliminary Approval of Class Action and PAGA Settlement came
2 before this Court on April 1, 2026, at 1:30 p.m., in Department 19 of the Superior Court of
3 California, County of Santa Clara, located 191 North First Street, San Jose, California 95113.
4 The Court, having considered the proposed Class Action and PAGA Settlement Agreement and
5 Release entered into by and between Plaintiff Diane De La Cruz (“Plaintiff”) and anticipated
6 plaintiffs, Simon Perez Flores and Santos Andrade Nazario (Plaintiff with Simon Perez Flores
7 and Santos Andrade Nazario collectively, “Plaintiffs”) and Defendant James Nicholson
8 Enterprises (“Defendant,” and together with Plaintiffs, the “Parties”), attached as **Exhibit 4** to
9 the Declaration of Arrash T. Fattahi in Support of Plaintiff’s Motion for Preliminary Approval
10 of Class Action and PAGA Settlement (hereinafter collectively, the “Settlement” or “Settlement
11 Agreement”); having considered the Motion for Preliminary Approval of Class Action and
12 PAGA Settlement; having considered the points and authorities and declaration submitted by
13 the Parties in support thereof; and good cause appearing, HEREBY ORDERS THE
14 FOLLOWING:

15 1. The Court finds on a preliminary basis that the Settlement Agreement appears to
16 be fair, adequate, and reasonable and therefore meets the requirements for preliminary approval.
17 The Court grants preliminary approval of the Settlement and the Settlement Class based upon
18 the terms set forth in the Settlement Agreement between the Parties, attached to the Declaration
19 of Arrash T. Fattahi in Support of Plaintiff’s Motion for Preliminary Approval of Class Action
20 and PAGA Settlement as **Exhibit 4**.

21 2. The Settlement falls within the range of reasonableness of a settlement which
22 could ultimately be given final approval by this Court, and appears to be presumptively valid,
23 subject only to any objections that may be raised at the Final Approval Hearing and final
24 approval by this Court. Defendant has agreed to pay \$250,000.00 to cover (a) Individual Class
25 Payments to Participating Class Members (class members who do not validly opt out); (b)
26 Private Attorneys General Act (“PAGA”) Penalties in the amount of \$3,600.00 with 75%
27 (\$2,700.00) allocated to the California Labor & Workforce Development Agency (“LWDA”)
28 PAGA Payment and 25% (\$900.00) allocated to the Individual PAGA Payments to be paid to

1 aggrieved employees; (c) Class Representative Service Payments of up to \$5,000.00 to each of
2 the Plaintiffs (\$15,000.00 total); (d) Class Counsel Fees Payment not to exceed one third (1/3)
3 of the Gross Settlement Amount (\$83,333.33) and Class Counsel Litigation Expenses Payment
4 up to \$25,000.00 for actual litigation expenses incurred by Class Counsel; and (e) Administrator
5 Expenses Payment not to exceed \$8,000.00.

6 3. The Court preliminarily finds that the terms of the Settlement appear to be within
7 the range of possible approval, pursuant to California Code of Civil Procedure § 382 and
8 applicable law. The Court finds on a preliminary basis that: (1) the Settlement amount is fair
9 and reasonable to the class members when balanced against the probable outcome of further
10 litigation relating to class certification, liability and damages issues, and potential appeals; (2)
11 significant informal discovery, investigation, research, and litigation have been conducted such
12 that counsel for the Parties at this time are able to reasonably evaluate their respective positions;
13 (3) settlement at this time will avoid substantial costs, delay, and risks that would be presented
14 by the further prosecution of the litigation; and (4) the proposed Settlement has been reached as
15 the result of intensive, serious, and non-collusive negotiations between the Parties with the
16 assistance of a well-respected class action mediator. Accordingly, the Court preliminarily finds
17 that the Settlement Agreement was entered into in good faith.

18 4. A final approval hearing on the question of whether the proposed Settlement,
19 attorneys' fees and costs to Class Counsel, payment to the LWDA and aggrieved employees for
20 their share of the settlement of claims for penalties under the PAGA, and the Class
21 Representative Service Payments should be finally approved as fair, reasonable and adequate
22 as to the members of the Class is hereby set in accordance with the Implementation Schedule
23 set forth below.

24 5. The Court provisionally certifies for settlement purposes only the following class
25 (the "Settlement Class"): "all current and former hourly, non-exempt employees who worked
26 for Defendant in California any time during the Class Period."

27 6. "Class Period" means the period from January 1, 2021, and April 3, 2025.

28 7. The Court finds, for settlement purposes only, that the Settlement Class meets the

1 requirements for certification under California Code of Civil Procedure § 382 in that: (1) the
2 Settlement Class Members are so numerous that joinder is impractical; (2) there are questions
3 of law and fact that are common, or of general interest, to all Settlement Class Members, which
4 predominate over individual issues; (3) Plaintiffs' claims are typical of the claims of the
5 Settlement Class Members; (4) Plaintiffs and Class Counsel will fairly and adequately protect
6 the interests of the Settlement Class Members; and (5) a class action is superior to other
7 available methods for the fair and efficient adjudication of the controversy.

8 8. The Court appoints as Class Representative, for settlement purposes only,
9 Plaintiff Diane De La Cruz and anticipated plaintiffs, Simon Perez Flores and Santos Andrade
10 Nazario. The Court further preliminarily approves Plaintiffs' ability to request a Class
11 Representative Service Payment of up to \$5,000.00 each (\$15,000.00 total).

12 9. The Court appoints, for settlement purposes only, Arrash T. Fattahi, Arman A.
13 Salehi, Emily K. Borman, and Courtney M. Miller of Wilshire Law Firm, PLC and Harout
14 Messrelian of Messrelian Law Inc. as Class Counsel. The Court further preliminarily approves
15 Class Counsel's ability to request attorneys' fees of up to one third (1/3) of the Gross Settlement
16 Amount (\$83,333.33), and costs not to exceed \$25,000.00.

17 10. The Court appoints Phoenix Settlement Administrators as the Settlement
18 Administrator with reasonable administration costs estimated not to exceed \$8,000.00.

19 11. Plaintiff is granted leave to amend to file a Second Amended Complaint, a
20 finalized version of **Exhibit 3** to the Declaration of Arrash T. Fattahi in Support of Plaintiff's
21 Motion for Preliminary Approval of Class Action and PAGA Settlement, in material form.

22 12. The Court approves, as to form and content the Class Notice, attached to the
23 Settlement Agreement. The Court finds on a preliminary basis that the plan for distribution of
24 the Class Notice to Settlement Class Members satisfies due process, provides the best notice
25 practicable under the circumstances, and shall constitute due and sufficient notice to all persons
26 entitled thereto.

27 13. The Parties are ordered to carry out the Settlement according to the terms of the
28 Settlement Agreement.

14. Any class member who does not timely and validly request exclusion from the Settlement may object to the Settlement Agreement.

15. The Court orders the following Implementation Schedule:

Event	Timing
Class Data: Last day for Defendant to provide Class Data to the Administrator	10 business days after the Court grants Preliminary Approval of the Settlement
Class Notice: Last day for Administrator to mail the Class Notice to Class Members	10 business days after receipt of the Class Data
Response Deadline: Last day for Class Members to submit written objections, challenges to workweeks and/or pay periods, and requests for exclusion	60 days after Class Notice is mailed out by the Administrator
Filing Deadline: Last day to file Motion for Final Approval, Request for Attorneys' Fees and Costs, and Class Representative Service Payments to Plaintiffs	16 court days before the Final Approval Hearing
Final Approval Hearing	_____, 2026, at _____ a.m./p.m. in Dept. 19 of the above-referenced Court.

16. The Court further ORDERS that, pending further order of this Court, all proceedings in this lawsuit, except those contemplated herein and in the settlement, are stayed.

IT IS SO ORDERED.

DATE: _____

HON. THEODORE C. ZAYNER
JUDGE OF THE SUPERIOR COURT