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JOSE ALARCON aka PORFIRIO CRUZ, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

(UNLIMITED JURISDICTION)

JOSE ALARCON aka PORFIRIO CRUZ,
on behalf of himself and all others similarly
situated, and the general public, and as an
“Aggrieved Employee” on behalf of other
“Aggrieved Employees” under the Private
Attorneys General Act of 2004,

Plaintiff(s),

vs.

VILLA PARK LANDSCAPE, a California
corporation; and DOES 1 to 25, inclusive,

Defendant(s).

Case No.: 30-2024-01371907-CU-OE-CXC

**NOTICE OF MOTION AND PLAINTIFF’S
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF JOINT
STIPULATION OF CLASS ACTION AND
PAGA SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

Action filed: 01/10/2024

Hearing Date: October 8, 2026

Hearing Time: 2:00 p.m.

Hearing Dept: CX-102, Hon. Layne H.
Melzer

Reservation Number: 74903335

Submitted Herewith Under Separate Cover

1. Memorandum of Points and Authorities;
2. Declaration of Maralle Messrelian;
3. Declaration of Jose Alarcon;
4. Declaration of Michael Moore; and
5. [Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement

1 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on October 8, 2026 at 2:00 p.m., or as soon thereafter as
3 the matter may be heard, in Department CX-102 of the above-entitled court, located at 751 W.
4 Santa Ana Blvd., Santa Ana, CA 92701, Plaintiff Jose Alarcon aka Porfirio Cruz (“Plaintiff”)
5 will and hereby does move this Court for an order: (1) granting class certification of the Class
6 solely for settlement purposes pursuant to Code of Civil Procedure § 382; (2) preliminarily
7 approving the Joint Stipulation of Class Action and PAGA Settlement and Release (the
8 “Settlement”)¹, (3) appointing Maralle Messrelian of MM Law, APC as Class Counsel; (4)
9 appointing Plaintiff as Class Representative; (5) approving the use of the proposed notice
10 procedures and related forms; (6) directing that notice be mailed to the proposed Class; and (7)
11 scheduling a hearing date for motion for final approval of class action settlement and awards of
12 attorneys’ fees and costs.

13 The “Settlement Class” or “Class Member(s)” means all individuals who are or were
14 employed by Defendant Villa Park Landscape as hourly, non-exempt employees in California
15 during the Class Period. “Class Period” means January 10, 2020 through September 10, 2025.

16 This Motion, unopposed by Defendant, is made on the following grounds: (1) the Class
17 meets all the requirements for class certification for settlement purposes only under Code of
18 Civil Procedure § 382; (2) Plaintiff and his counsel are adequate to represent the Class; (3) the
19 Settlement reflects a fair, adequate, and reasonable compromise of all disputed claims in view of
20 Defendant’s potential liability exposure as compared against the risks of continued litigation; (4)
21 the proposed notice procedures and related forms adequately apprise Class Members of their
22 rights under the Settlement and fully comport with due process; and (5) in view of the foregoing,
23 notice should be disseminated to Class Members and a hearing date for a motion for final
24 approval of class action settlement and awards of attorneys’ fees and costs should be set.

25 The Motion is based on this Notice of Motion and Motion, the attached Memorandum of
26 Points and Authorities, the Declarations of Maralle Messrelian, Jose Alarcon, and Michael
27 Moore, the exhibits, all papers and pleadings on file with the Court in this action, all matters
28 judicially noticeable, and on such oral and documentary evidence as may be presented in
connection with the hearing on the Motion.

¹ The Settlement is attached as Exhibit 1 to the Declaration of Maralle Messrelian (“MM”), which is submitted herewith under a separate cover.

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Respectfully submitted,

MM LAW, APC

Dated: July 16, 2026

By: Maralle Messrelian
MARALLE MESSRELIAN
Attorneys for Plaintiff and the Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jose Alarcon aka Porfirio Cruz (“Plaintiff”) submits this memorandum of
4 points and authorities in support of his unopposed motion for preliminary approval of the Joint
5 Stipulation of Class Action and PAGA Settlement and Release (the “Settlement”)¹, which
6 provides for a Gross Settlement Amount (“GSA”) of \$1,200,000 in compromise of all disputed
7 claims on behalf of all current and former non-exempt, hourly paid employees who worked for
8 Defendant Villa Park Landscape (“Defendant” or “Villa Park”) in California at any time during
9 the Class Period of January 10, 2020 to September 10, 2025. Through this Motion, Plaintiff
10 respectfully requests for this Court to (1) provisionally certify the below-defined Class for
11 settlement purposes only under Code of Civil Procedure § 382; (2) preliminarily approve the
12 Settlement; (3) preliminarily appoint Plaintiff as Class Representative; (4) appoint Maralle
13 Messrelian of MM Law, APC as Class Counsel; (5) approve the proposed notice procedures
14 and related forms; and (6) schedule a final approval hearing.

15 This Court should grant Plaintiff’s motion because: (1) for settlement purposes, the
16 Settlement Class meets the requirements for class certification under Code of Civil Procedure §
17 382; (2) the Settlement warrants preliminary approval based on all indicia for fairness,
18 reasonableness, and adequacy; (3) for settlement purposes, Plaintiff is adequate to serve as
19 Class Representative; (4) Plaintiff’s attorneys are adequate to serve as Class Counsel; (5) the
20 proposed notice procedures, and related forms, fully comport with due process and adequately
21 apprise Class Members of their rights; and (6) a final approval hearing must be scheduled to
22 allow Settlement Class members an opportunity to be heard regarding the Settlement and to
23 give it finality. Accordingly, for the reasons detailed below, this Court should grant Plaintiff’s
24 Motion in its entirety and preliminarily approve the Settlement.

25 ///

26 ///

27 _____
28 ¹ The Settlement is attached as Exhibit (“Ex.”) 1 to the Declaration of Maralle Messrelian (“MM”),
which is submitted herewith under a separate cover.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 Defendant Villa Park Landscape first employed Plaintiff as a laborer in or around 2021.
3 Villa Park paid Plaintiff and the other Class Members by the hour on a weekly basis and
4 classified them as non-exempt employees. MM, ¶ 4.

5 **A. Plaintiff’s Claims and Procedural History**

6 On September 14, 2023, Plaintiff notified Defendant and the California Labor and
7 Workforce Development Agency (“LWDA”), pursuant to the California Private Attorneys
8 General Act of 2004, California Labor Code sections 2698, et seq. (“PAGA”), of alleged Labor
9 Code violations committed by Defendant. MM, ¶ 5, Ex. 2.

10 On January 10, 2024, Plaintiff filed a Class Action Complaint in the Orange County
11 Superior Court, Case No. 30-2024-01371907-CU-OE-CXC against Defendant on behalf of
12 himself and others similarly situated, alleging causes of action on a class-wide basis for
13 (1) Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab.
14 Code §§ 510, 1194, 1197, and 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7
15 and 1198); (3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198); (4) Failure
16 to Indemnify (Lab. Code § 2802); (5) Failure to Provide Accurate Itemized Wage Statements
17 (Lab. Code § 226); (6) Failure To Pay Wages When Employment Ends (Lab. Code §§ 201–
18 203); (7) Civil Penalties (Lab. Code §§ 2698, et seq.); and (8) Unfair Competition (Bus. &
19 Prof. Code, § 17200, et seq.). MM, ¶ 6, Ex. 3. On March 28, 2024, Defendant filed its Answer
20 to Plaintiff’s Complaint. MM, ¶ 6, Ex. 4.

21 The Parties met and conferred and agreed that it may be in their mutual interests to
22 discuss Plaintiff’s allegations informally, rather than through litigation, and scheduled private
23 mediation. MM, ¶ 7.

24 **B. Mediation with Professional Neutral Steve Pearl, Esq.**

25 On September 12, 2024, the Parties attended and participated in good faith, arms’ length
26 settlement discussions at a mediation session with Steve Pearl, Esq., an experienced
27 professional mediator. MM, ¶ 8. The matter did not resolve at the mediation session itself. Over
28 the ensuing months, and with Mr. Pearl’s continued assistance, the Parties continued to

1 negotiate. *Id.* Because Defendant represented that it had a limited ability to pay, Defendant
2 produced confidential financial records, which Plaintiff’s counsel retained an expert, Ken
3 Creal, to analyze in order to determine the amount Defendant could reasonably pay given its
4 financial constraints. *Id.* Mr. Pearl ultimately made a mediator’s proposal based on Defendant’s
5 financial condition, which the Parties accepted. Upon accepting the mediator’s proposal, the
6 Parties memorialized the material terms in a Memorandum of Understanding and thereafter
7 executed the long-form Settlement Agreement. *Id.* Defendant denies any liability or
8 wrongdoing of any kind whatsoever associated with the lawsuit. MM, ¶ 10.

9 In advance of the mediation, and before agreeing to the terms of the Settlement, the
10 Parties engaged in informal discovery. Through informal discovery, Defendant produced its
11 employee handbook, copies of its relevant written policies, and sample time and payroll records
12 for Class Members; the timesheets were all handwritten. After the mediation, Defendant
13 produced additional time and payroll records for Plaintiff’s counsel’s review. Now that the
14 Parties have finalized the long-form Settlement, Plaintiff submits it to this Court for
15 preliminary approval. MM, ¶ 9. It is the desire of the Parties to fully, finally, and forever
16 compromise, and discharge all claims known or unknown related to those alleged in Plaintiff’s
17 lawsuit. MM, ¶ 10.

18 **III. OVERVIEW OF SETTLEMENT**

19 **A. Settlement Class Definition**

20 The “Settlement Class” or “Class Member(s)” means all individuals who are or were
21 employed by Defendant Villa Park Landscape as hourly, non-exempt employees in California
22 during the Class Period. “Class Period” means January 10, 2020 through September 10, 2025.
23 Settlement, ¶¶ 6, 8.

24 **B. Monetary Terms**

25 In consideration for settlement of the Class Action, Defendant agrees to pay a total of
26 One Million Two Hundred Thousand Dollars (\$1,200,000.00) (the “Gross Settlement Amount”
27 or “GSA”). The GSA will be all-inclusive and includes: (1) all Individual Settlement Payments
28 to Class Members; (2) a Class Representative Enhancement Payment to Plaintiff, as class

1 representative and private attorney general, for up to \$10,000; (3) Class Counsel's Attorneys'
2 Fees of not more than one third of the GSA (\$400,000) and for litigation costs not to exceed
3 \$13,000; (4) Settlement Administration Costs of not more than \$15,000 (currently estimated at
4 \$14,500); and (5) \$100,000 for the PAGA Penalties under California Labor Code §§ 2699 et
5 seq. (75% or \$75,000 will be paid to the California Labor & Workforce Development Agency
6 ("LWDA Payment") and 25% or \$25,000 ("Aggrieved Employee Payment") will be disbursed
7 to Aggrieved Employees, regardless of whether they request to be excluded from the
8 Settlement Class). The GSA is non-reversionary. The Settlement is not a claims-made
9 settlement. The GSA shall be exclusive of Defendant's employer-side payroll taxes, which
10 Defendant shall pay in addition to the GSA. Settlement, ¶¶ 16, 39-42. The "Net Settlement
11 Amount" means the portion of the Gross Settlement Amount remaining after deducting the
12 Attorneys' Fees and Costs, the Class Representative Enhancement Payment, the LWDA
13 Payment, and Settlement Administration Costs, and will be distributed on a pro rata basis to
14 Participating Class Members based on the number of weeks worked by each Participating Class
15 Member during the Class Period, with no reversion to Defendant. Settlement, ¶ 19.

16 Individual Settlement Payment Calculations: Individual Settlement Payments will be
17 calculated and apportioned from the Net Settlement Amount and Aggrieved Employee
18 Payment based on the number of Workweeks a Class Member worked during the Class Period
19 and the number of PAGA Pay Periods an Aggrieved Employee worked during the PAGA
20 Period, respectively. Specific calculations of Individual Settlement Payments will be made as
21 follows:

22 Payments from the Net Settlement Amount:

- 23 • Defendant will calculate the total number of Workweeks worked by each Class
24 Member during the Class Period and the aggregate total number of Workweeks
25 worked by all Class Members during the Class Period. To determine each Class
26 Member's estimated "Individual Settlement Payment" from the Net Settlement
27 Amount, the Settlement Administrator will use the following formula: The Net
28 Settlement Amount will be divided by the aggregate total number of Workweeks
during the Class Period, resulting in the "Workweek Value." The Net Settlement
Amount portion of each Class Member's "Individual Settlement Payment" will
be calculated by multiplying each individual Class Member's total number of
Workweeks by the Workweek Value. The entire Net Settlement Amount will be

disbursed to all Class Members who do not submit timely and valid Requests for Exclusion. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Payment for each Participating Class Member according to the number of Workweeks worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Amount.

Payments from the Aggrieved Employee Payment:

- Defendant will calculate the total number of PAGA Pay Periods worked by each Aggrieved Employee during the PAGA Period and the aggregate total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period. To determine each Aggrieved Employee's estimated "Individual Settlement Payment" from the Aggrieved Employee Payment, the Settlement Administrator will use the following formula: The Aggrieved Employee Payment will be divided by the aggregate total number of PAGA Pay Periods during the PAGA Period, resulting in the "PAGA Pay Period Value." The Aggrieved Employee Payment portion of each Aggrieved Employee's "Individual Settlement Payment" will be calculated by multiplying each individual Aggrieved Employee's total number of PAGA Pay Periods by the PAGA Pay Period Value. The entire Aggrieved Employee Payment will be disbursed to all Aggrieved Employees.

Settlement, ¶ 46.

All Individual Settlement Payments will be allocated as follows: (a) Twenty Percent (20%) of the Net Settlement Amount portion of each Individual Settlement Payment will be allocated as wages for which IRS Forms W-2 will be issued; and (b) Eighty Percent (80%) of the Net Settlement Amount portion of each Individual Settlement Payment will be allocated as penalties and interest for which IRS Forms 1099-MISC will be issued. One Hundred Percent (100%) of payments issued to Aggrieved Employees from the Aggrieved Employee Payment will be treated as non-wages for which IRS Forms 1099-MISC will be issued. Settlement, ¶ 66.

Defendant shall fund the Gross Settlement Amount in three equal installments of \$400,000 each: the first within thirty (30) calendar days after the Court enters the order granting preliminary approval; the second within one hundred eighty (180) calendar days after the first payment; and the third within one hundred eighty (180) calendar days after the second payment, together with the employer's share of payroll taxes.² Settlement, ¶ 38. The date on

² "Effective Date" means the later of: (a) if no timely objections are filed, or are withdrawn prior to Final Approval, then the date of Final Approval; or (b) if a Class Member files an objection to the Settlement, the

1 which Defendant fully funds the Gross Settlement Amount is referred to herein as the “Funding
2 Date.” *Id.* Within ten (10) calendar days of the Funding Date, the Settlement Administrator will
3 issue payments to: (a) Participating Class Members and Aggrieved Employees; (b) the Labor
4 and Workforce Development Agency; (c) Plaintiff; (d) Class Counsel for the court-approved
5 Attorneys’ Fees and Costs; and (e) itself, for Court-approved services performed in connection
6 with the Settlement. Settlement, ¶ 63.

7 **C. Release of Claims**

8 Releases by Participating Class Members: Upon the Funding Date, and except as to
9 such rights or claims as may be created by this Settlement Agreement, each Participating Class
10 Member, together and individually, on their behalf and on behalf of their respective
11 representatives, heirs, executors, successors, assignees, administrators, agents, and attorneys,
12 shall fully and forever release and discharge all of the Released Parties, or any of them, from
13 each of the Released Class Claims arising during the Class Period. The Released Class Claims
14 will forever be binding on, and shall have res judicata and preclusive effect in, all past,
15 pending, and future lawsuits maintained by Participating Class Members for any and all of the
16 Released Class Claims. Settlement, ¶¶ 30, 58. The “Released Parties” means Defendant and all
17 past, present and/or future, direct and/or indirect, officers, directors, members, managers,
18 employees, agents, representatives, attorneys, insurers, partners, investors, shareholders,
19 administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors,
20 assigns, and joint venturers. Settlement, ¶ 32.

21 The Released Class Claims include:

22 All claims that were alleged, or reasonably could have been alleged, based on the facts
23 stated in the Operative Complaint that arose during the Class Period, including claims
24 for: (1) failure to pay minimum wages in violation of Labor Code sections 1197, and
25 1198, and the applicable IWC Wage Order(s); (2) failure to pay overtime wages in
26 violation of Labor Code sections 510, and the applicable IWC Wage Order(s); (3)
failure to provide compliant rest periods and pay missed rest break premiums in

27 Effective Date shall be the sixty-first (61st) calendar day after the date of Final Approval, provided no appeal is
28 initiated by an objector; or (c) if a timely appeal is initiated by an objector, then the Effective Date will be the date
of final resolution of that appeal (including any requests for rehearing and/or petitions for certiorari), resulting in
final judicial approval of the Settlement. Settlement, ¶ 13.

violation of Labor Code section 226.7 and the applicable IWC Wage Order(s); (4) failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the applicable IWC Wage Order(s); (5) failure to pay all wages due at separation of employment in violation of Labor Code sections 201-203; (6) failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; (7) failure to reimburse necessary business expenses in violation of Labor Code sections 2800-2804; (8) deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); and (9) all claims for liquidated damages, penalties, interest, fees, costs based on the foregoing.

Settlement, ¶ 30.

Releases by Aggrieved Employees. Upon the Funding Date, and except as to such rights or claims as may be created by this Settlement Agreement, each Aggrieved Employee, together and individually, on their behalf and on behalf of their respective representatives, heirs, executors, successors, assignees, administrators, agents, and attorneys, shall fully and forever release and discharge all of the Released Parties, or any of them, from each of the Released PAGA Claims during the PAGA Period. The Released PAGA Claims will forever be binding on, and shall have res judicata and preclusive effect in, all past, pending, and future lawsuits maintained by either the LWDA or Aggrieved Employees for any and all of the Released PAGA Claims. Settlement, ¶¶ 31, 59.

“Released PAGA Claims” include:

All known or unknown claims for civil penalties, attorneys' fees and costs, or any other relief under PAGA arising out of the Labor Code claims that were alleged, or reasonably could have been alleged based on any facts, claims, or theories set forth in the PAGA Notice against Defendant dated September 14, 2023, which occurred during the PAGA Period.

Settlement, ¶ 31.

Plaintiff also provided Defendant with a general release of all claims, whether known or unknown, including unknown claims covered by Civil Code Section 1542. Settlement, ¶ 60.

D. Class Notice and Settlement Administration

Within twenty (20) calendar days following the Court's entry of its Order Granting Preliminary Approval of Settlement, Defendant shall provide Phoenix Settlement Administrators, the appointed Settlement Administrator, the Class List with the following

1 information about each Class Member: (1) full name; (2) most recent mailing address and
2 telephone number; (3) Social Security Number; (4) dates of employment; (5) the respective
3 number of Workweeks that each Class Member worked during the Class Period and the number
4 of PAGA Pay Periods worked during the PAGA Period. Settlement, ¶¶ 5, 49.

5 Within ten (10) calendar days after the receipt of the Class List, the Settlement
6 Administrator shall be responsible for calculating the estimated payouts to the Class Members
7 assuming all Class Members participate in the Settlement and shall mail the Class Notice, in
8 both English and Spanish, to all Class Members pursuant to the terms of the Settlement, by
9 First Class regular U.S. mail using the most current, known mailing addresses identified in the
10 Class List. Settlement, ¶¶ 50, 52. Prior to mailing, the Settlement Administrator will perform a
11 search based on the National Change of Address Database for information to update and correct
12 any known or identifiable address changes. Settlement, ¶ 51. Any Class Notices returned to the
13 Settlement Administrator as non-deliverable on or before the Response Deadline will be sent
14 within five (5) business days via regular First-Class U.S. Mail to the forwarding address affixed
15 thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class
16 Notice. If no forwarding address is provided, the Settlement Administrator will promptly
17 attempt to determine the correct address using a skip-trace, or other search using the name,
18 address and/or Social Security Number of the Class Member involved and will then perform a
19 single re-mailing. Those Class Members who receive a re-mailed Class Notice will have either
20 (a) fifteen (15) calendar days from the date of re-mailing or (b) until the Response Deadline,
21 whichever is later, to submit a Request for Exclusion, disputes concerning the calculation of the
22 Class Member's Individual Settlement Payment, or an objection to the Settlement. *Id.*

23 The Response Deadline by which Class Members must postmark or email to the
24 Settlement Administrator Requests for Exclusion, postmark or email disputes concerning the
25 calculation of Individual Settlement Payments, or postmark or email Notices of Objection to
26 the Settlement Administrator will be sixty (60) calendar days from the initial mailing of the
27 Class Notice by the Settlement Administrator, unless the sixtieth (60th) calendar day falls on a
28

1 Sunday or State holiday, in which case the Response Deadline will be extended to the next day
2 on which the U.S. Postal Service is open. Settlement, ¶ 34.

3 **1. Procedures for Class Member Disputes**

4 To the extent Class Members dispute their employment dates or the number of
5 Workweeks or PAGA Pay Periods on record, Class Members may produce evidence to the
6 Settlement Administrator showing that such information is inaccurate. Defendant's records will
7 be presumed correct, but the Settlement Administrator shall contact the Parties regarding the
8 dispute and the Parties will work in good faith to resolve it. All disputes must be submitted by
9 the Response Deadline and will be decided within ten (10) business days after the Response
10 Deadline. While the Settlement Administrator and the Parties will attempt to resolve any such
11 disputes, the Court ultimately will decide any unresolved disputes. Settlement, ¶ 53.

12 **2. Procedures for Opting Out of the Class**

13 Any Class Member wishing to opt-out of the Settlement must sign and email or
14 postmark a written Request for Exclusion to the Settlement Administrator within the Response
15 Deadline. In the case of Requests for Exclusion that are mailed to the Settlement Administrator,
16 the postmark date will be the exclusive means to determine whether a Request for Exclusion
17 has been timely submitted. Those Class Members who receive a re-mailed Class Notice will
18 have either (a) fifteen (15) calendar days from the date of re-mailing or (b) until the Response
19 Deadline, whichever is later, to submit a Request for Exclusion. Settlement, ¶ 55.

20 **3. Procedures for Objecting to the Settlement**

21 To object to the Settlement Agreement, a Class Member may either email or postmark a
22 valid Notice of Objection to the Settlement Administrator on or before the Response Deadline
23 or appear in person at the Final Approval Hearing. Settlement, ¶ 61. For the Notice of
24 Objection to be valid, it must include: (a) the objector's full name, signature, address, and
25 telephone number, (b) a written statement of all grounds for the objection accompanied by any
26 legal support for such objection; (c) copies of any papers, briefs, or other documents upon
27 which the objection is based; and (d) a statement whether the objector intends to appear at the
28 final fairness hearing. Settlement, ¶ 20.

1 **E. Uncashed Checks**

2 Proceeds represented by Individual Settlement Payment checks returned as
3 undeliverable and Individual Settlement Payment checks remaining un-cashed for more than
4 one hundred and eighty (180) calendar days after issuance will be transmitted to the State
5 Controller Unclaimed Property Fund in the name of the Class Member thereby leaving no
6 “unpaid residue” subject to the requirements of California Code of Civil Procedure Section
7 384, subd. (b). Settlement, ¶ 64.

8 **IV. CERTIFICATION OF THE PROPOSED CLASS IS APPROPRIATE.**

9 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable
10 and its members are too numerous for joinder to be practical; (2) the representative and absent
11 class members share a community of interest and questions of law and fact common to the class
12 predominate over questions unique to individual class members; (3) the representative’s claims
13 are typical of the class’ claims; and (4) the representative will fairly and adequately represent
14 the class’ interests. *See, e.g., Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.
15 Moreover, in the settlement context, the Court can use a lesser standard to determine the
16 appropriateness of a settlement class as opposed to a litigated class certification. *Dunk v. Ford*
17 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1807. As explained below, all of these requirements
18 are met in this case.

19 **1. The Settlement Class Is Objectively Ascertainable.**

20 A class is ascertainable when it may be readily identified without unreasonable expense
21 or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926,
22 932 (citing *Hypolite v. Carleson* (1975) 52 Cal.App.3d 566, 579). Plaintiff maintains that the
23 above-defined Class is ascertainable because its members may be identified by reference to
24 Defendant’s records and Defendant has agreed to share the relevant information from its
25 records to facilitate the settlement process. MM, ¶ 11; Settlement, ¶¶ 5, 49. Therefore, the
26 Settlement Class is ascertainable.

27 ///

28 ///

1 **2. The Membership of the Settlement Class Is Sufficiently Numerous.**

2 The Settlement Class has sufficiently numerous members to render joinder impractical.
3 No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove*
4 (1972) 28 Cal.App.3d 1017, 1030. Defendant estimates that there are approximately 1,553
5 Class Members. MM, ¶ 12. Plaintiff maintains that it would be impractical and economically
6 inefficient to require each Class Member to separately maintain an individual action or be
7 joined as a named plaintiff in this action. The California Supreme Court has upheld a class of
8 as few as 10 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these
9 considerations, the Settlement Class’ membership is sufficiently numerous. MM, ¶ 12. *See*
10 *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695.

11 **3. Class Members Share a Well-Defined Community of Interest.**

12 The community of interest requirement “embodies three factors: (1) predominant
13 common questions of law or fact; (2) class representatives with claims or defenses typical of
14 the class; and (3) class representatives who can adequately represent the class.” *Sav-On Drug*
15 *Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 326. It “does not mandate that class
16 members have uniform or identical claims.” *Capitol People First v. Dept. of Developmental*
17 *Servs.* (2007) 155 Cal. App. 4th 676, 692. Rather, courts focus on the defendant’s internal
18 policies and “pattern and practice . . . in order to assess whether that common behavior toward
19 similarly situated plaintiffs renders class certification appropriate.” *Id.* (citing *Sav-On*, 34 Cal.
20 4th at 333).

21 To justify certification, the class proponent ““must show ... that questions of law or fact
22 common to the class predominate over the questions affecting the individual members”
23 *See, Arenas v. El Torito Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010) (citing *Washington*
24 *Mut. Bank, FA v. Superior Court*, 24 Cal.4th 906, 913 (2001)). In light of the more lenient
25 standard for certification of a settlement class, the Parties agree that for the purposes of the
26 Settlement only, the claims of the Class Members all stem from the same sources. MM, ¶ 13.

27 In this case, Plaintiff asserts all class members were subject to the same or similar
28 operations and employment policies, practices, and procedures. The claims arise from

1 Defendant's alleged uniform policy of failing to properly account for all time worked and
2 failing to, among other things, properly pay minimum and overtime wages, provide off-duty
3 meal and rest periods, indemnify Class Members for business expenses, timely pay wages upon
4 termination, and provide compliant wage statements, all of which Plaintiff claims constitute
5 unfair business practices and give rise to PAGA penalties. Plaintiff asserts that common
6 questions include, but are not limited to: (1) Whether Defendant failed to pay all wages earned
7 to Class Members for all hours worked at the correct rates of pay; (2) Whether Defendant failed
8 to provide the Class with all meal and rest periods in compliance with California law; (3)
9 Whether Defendant failed to pay the Class one additional hour of pay on workdays they failed
10 to provide the class with one or more meal or rest periods in compliance with California law;
11 (4) Whether Defendant failed to indemnify the Class for all necessary business expenditures
12 incurred during the discharge of their duties including, but not limited to, personal protective
13 equipment and personal mobile phones; (5) Whether Defendant knowingly and intentionally
14 failed to provide the Class with accurate and complete itemized wage statements; (6) Whether
15 Defendant willfully failed to provide the Class with timely final wages; and (7) Whether
16 Defendant engaged in unfair competition within the meaning of Business and Professions Code
17 section 17200, et seq., with respect to the class. MM, ¶ 13. Therefore, common questions
18 predominate.

19 **4. Plaintiff Is Typical of the Settlement Class.**

20 The class representative must be similarly situated to the rest of the purported class. *See*
21 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46 (stating "it has never been the law in
22 California that the class representative must have identical interests with the class members.
23 The only requirements are ... that the class representative be *similarly* situated") (emphasis in
24 original); *See also* Newberg, § 3:29 (typicality "focuses on whether there exists a relationship
25 between the Plaintiffs claims and the claims alleged on behalf of the class"). Plaintiff contends
26 that his claims are typical for the purposes of certifying the Settlement Class. Plaintiff asserts
27 that he, like absent Class Members was subject to the same relevant policies and procedures
28 governing his compensation, hours of work and meal and rest periods. Because Plaintiff

1 contends that he was subject to the same general course of conduct as absent Class Members,
2 resolving the common questions as they apply to Plaintiff will determine Defendant's *prima*
3 *facie* liability to all Class Members. Moreover, Plaintiff's claims could potentially be subject to
4 the same primary affirmative defenses as those of absent Class Members. Accordingly,
5 Plaintiff's claims are typical of the Class. MM, ¶ 14.

6 **5. Plaintiff Will Adequately Represent the Settlement Class.**

7 The adequacy requirement is met where the plaintiff is represented by counsel qualified
8 to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to the
9 class' interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words,
10 where the plaintiff has adequate counsel, the plaintiff may represent the entire class absent any
11 disabling conflicts of interest that might hinder the plaintiff's ability to represent the class. MM,
12 ¶ 15.

13 First, Plaintiff's counsel has supplied the Court with declarations to show that they are
14 adequate to represent the Settlement Class and that they have significant experience in
15 employment litigation generally, and wage and hour and employment-related class action
16 litigation specifically. *See* MM, ¶¶ 17-21. Thus, Plaintiff's counsel is adequate to serve as Class
17 Counsel.

18 Second, Plaintiff contends that he is an adequate class representative. Plaintiff and the
19 Class Members have strong and co-extensive interests in this litigation because they all worked
20 for Defendant during the relevant time period, allegedly suffered the same alleged injuries from
21 the same alleged course of conduct, and there is no evidence of any conflict of interest between
22 Plaintiff and the Class Members. MM, ¶ 16. Moreover, Plaintiff has demonstrated his
23 commitment to the Settlement Class by, among other things, retaining experienced counsel,
24 providing counsel with documents and extensively speaking with them to assist in identifying
25 the claims asserted in this case, and exposing himself to the risk of attorneys' fees and costs
26 awards against him if this lawsuit had been unsuccessful. MM, ¶ 16; *See generally* Declaration
27 of Jose Alarcon aka Porfirio Cruz submitted herewith under separate cover. Thus, Plaintiff is
28 adequate to serve as Class Representative. Accordingly, this Court should find that Plaintiff and

his counsel are adequate to represent the Settlement Class as required under Code of Civil Procedure § 382.

6. Class Action Treatment Is the Superior Means for Resolving the Claims of the Class Members.

Plaintiff further contends that a class action is also superior to other means adjudicating the issues in this action. The predominance of common legal and factual questions shows that this Court could fairly adjudicate the claims of Class Members through a single class action. In view of the *theoretical* alternatives that proposed class members could potentially utilize—representative PAGA action (where there is less relief available), individual civil lawsuits or wage claims through the Division of Labor Standards Enforcement (where there would be relatively little money at stake, but the claims would be time-consuming to litigate)—a class action is plainly superior to all of them. Thus, this consideration supports conditional class action treatment for purposes of this Settlement only. MM, ¶ 22.

V. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE, AND THE COURT SHOULD GRANT PRELIMINARY APPROVAL.

A. Legal Standard

A class action settlement requires court approval. California Rules of Court (“CRC”), Rule 3.769 provides three steps for approval:

- 1) Preliminary approval after submission of a written motion for preliminary approval, the proposed class settlement, and the proposed class notice;
- 2) Issuance of notice of settlement to class members; and
- 3) A final settlement approval hearing where class members may be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement is presented.

The decision to approve or reject a class settlement is committed to the Court’s broad discretion. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The decision to approve class settlement may be reversed only upon a showing of “clear abuse of discretion.” *Id.*

B. The Settlement Is Presumptively Fair

In assessing preliminary approval, a court evaluates if the settlement process has certain indicia of fairness. A “presumption of fairness exists where (1) the settlement is reached

1 through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel
2 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
3 percentage of objectors is small.” *Kullar*, 168 Cal. App. 4th at 128, quoting *Dunk v. Ford*
4 *Motor Co.*, (1996) 48 Cal.App.4th at 1794.

5 The class settlement here satisfies all of these factors. MM, ¶ 23. The Settlement
6 resulted from thorough, arms' length negotiations between experienced counsel with the
7 assistance of a respected mediator after sufficient discovery was exchanged to assess the
8 relative strengths and weaknesses of their respective cases and Defendant's estimated exposure.
9 *Id.* Both defense counsel and Plaintiff's counsel are particularly experienced in employment
10 law and wage and hour class actions and are experienced and qualified to evaluate the class
11 claims, the viability of the defenses, and the risks and benefits of settlement versus trial on a
12 fully informed basis. Counsel on both sides share the view that the Settlement is a fair and
13 reasonable settlement in light of the complexities of the case and uncertainties of class
14 certification and litigation, and a fair result for the Class Members. *Id.*

15 **C. The Settlement Satisfies the *Kullar* Factors for Approval.**

16 The *Kullar* case sets forth several factors a court should consider in determining
17 whether to approve a class settlement. These factors include: (1) the strength of plaintiff's
18 case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of
19 maintaining class action status through trial; (4) the amount offered in settlement; (5) the
20 extent of discovery completed and stage of the proceedings; (6) the experience and views of
21 counsel; (7) the presence of a governmental participant; and (8) the reaction of the class
22 members to the proposed settlement. 168 Cal.App.4th at 128. As demonstrated herein, the
23 Settlement satisfies each of these factors.

24 **1. Evaluation of Plaintiff's Case**

25 The Parties reached the Settlement through arm's-length bargaining with the aid of a
26 respected mediator. The Parties conducted sufficient investigation and discovery to allow
27 Counsel and the Court to act intelligently. Plaintiff considered various sources of information in
28 the lead-up to and during the mediation of September 12, 2024 that enabled Plaintiff to achieve

1 the Settlement at issue.

- 2 • Defendant produced and Plaintiff's counsel reviewed Plaintiff's timekeeping and payroll records.
- 3
- 4 • Plaintiff's counsel requested that Defendant produce any and all policies regarding overtime and double-time wages, off the clock work, expense reimbursement, meal periods, rest breaks, meal period waivers and agreements, compensation plans, and complaints about working conditions in effect during the relevant time period. Defendant produced its pertinent wage and hour policies, including those contained within its employee handbook.
- 7
- 8 • Plaintiff's counsel requested that Defendant provide the total number of employees, paychecks, and the pay cycles during the relevant period. Defendant provided the answers to each of these questions.
- 9
- 10 • Plaintiff's counsel requested sample time and payroll records for the relevant time period. Defendant produced handwritten timesheets and corresponding payroll records for a sample of Class Members throughout the Class Period and, after the mediation, produced additional time and payroll records for Plaintiff's counsel's review.
- 12
- 13 • Plaintiff's counsel then examined the records to determine if there was any pay discrepancy in timesheet hours versus paid hours, meal violations, and if there was any rounding/time shaving issues.
- 14
- 15
- 16 • Plaintiff's counsel analyzed the state of caselaw on meal and rest break claims, claims for off-the-clock work, and claims for unreimbursed expenses.

17 MM, ¶ 24.

18 Defendant disclosed that there were approximately 160,475 workweeks worked by the
19 Settlement Class during the Class Period. Based on this information, and as set forth in detail in
20 the accompanying Declaration of Maralle Messrelian, Plaintiff's counsel prepared a claim-by-
21 claim valuation of Defendant's maximum exposure: approximately \$11,253,309 for unpaid
22 minimum and overtime wages, \$13,640,375 for meal period premiums, \$13,640,375 for rest
23 period premiums, \$680,030 for unreimbursed business expenses, \$1,717,680 for waiting time
24 penalties, and \$5,176,800 for wage statement penalties, plus approximately \$18,973,350 in
25 PAGA civil penalties, for a total maximum potential exposure of approximately \$65,081,919.
26 These figures are in essence "home run" projections that do not factor in any of the risks
27 involved in litigating this Action and are not in line with reality, especially when considering
28 Defendant's policies and its position on the issues. MM, ¶¶ 24–39.

1 Plaintiff also estimated approximately \$18,973,350 in potential civil penalties under the
2 PAGA. MM, ¶¶ 37–38. This estimate does not reflect the realities of this case and did not take
3 into account any of the risks discussed above and assumed high violation rates across the
4 PAGA Pay Periods. As such, the Parties discounted potential civil penalties for multiple
5 reasons. For one, Plaintiff’s PAGA claims are predicated on the wage underpayment, meal,
6 rest, business expense reimbursement, and wage statement violations described above, and thus
7 subject to the same disputes and defenses. Plaintiff’s counsel also assessed multiple penalties
8 for the same pay period for the same alleged violations of different Labor Code provisions and
9 derivative violations. Plaintiff’s counsel is not aware of any California state courts awarding
10 plaintiffs multiple PAGA penalties for the same violation for the same pay period under
11 different Labor Code provisions. This may be because the PAGA does not provide for what
12 many employers characterize as claim splitting and not merely stacking. Additionally, PAGA
13 states a court has discretion to award a lesser amount than the maximum penalty. Lab. Code §
14 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112,
15 1135 (reducing PAGA award).

16 The Settlement obviates the significant risk that this Court may deny certification of
17 some or all of Plaintiff’s claims. Even if Plaintiff obtained certification of some or all of the
18 claims, continued litigation would be expensive, involving a trial and possible appeals, and
19 would substantially delay and reduce any recovery by the Class Members. While Plaintiff is
20 confident in the merits of his case, a legitimate controversy exists as to each cause of action.
21 MM, ¶¶ 26, 28, 30, 32, 34, 36, 38. To illustrate this consideration, below is brief summary of
22 some of Defendant’s arguments, all of which Plaintiff disputes, but nevertheless acknowledges
23 as potential threats to the Settlement Class’ claims.

- 24 • Defendant contends that, to establish a violation for missed meal periods, a plaintiff
25 must do more than show that a meal break was not taken. *Brinker Restaurant Corp. v.*
26 *Superior Court* (2012) 53 Cal.4th 1004. So long as an employer provides employees
27 with a “reasonable opportunity” to take a duty-free meal period, it has no further duty to
28 “police meal breaks and ensure no work thereafter is performed.” *Id.* at 1040-41.

1 Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the
2 employee from taking a proper break, or otherwise failed to release the employee of all
3 control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the reason
4 that a particular employee may have failed to take a meal break.” *Washington v. Joe’s*
5 *Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. Defendant contends that
6 individualized proof will be needed to establish liability on Plaintiff’s meal period
7 claims. Defendant argues that Settlement Class Members will testify that they were
8 plainly advised by their supervisors, and fully understood, that they were authorized to
9 take meal periods within each five-hour period worked and, in fact, took such breaks.
10 Moreover, Defendant’s timekeeping data cannot show why a meal break does not
11 appear in the time records. For example, a meal period may have been authorized and
12 taken, but simply not punched in and out. Moreover, Villa Park’s handwritten
13 timesheets contained pre-printed break and meal period times that employees merely
14 check-marked, rather than actual recorded meal period start and end times, making it
15 impossible to analyze the time records for a classwide meal period violation rate. In
16 addition, each timesheet contained a Spanish-language meal period attestation directing
17 the employee to check a box confirming that a timely, compliant meal period was taken,
18 to notify a supervisor if any meal period violation occurred, and to verify that his or her
19 hours were recorded correctly before signing, which Defendant would offer as evidence
20 that compliant meal periods were provided and taken. Furthermore, Villa Park started
21 paying automatic meal period premiums.

- 22 • Defendant contends that there is no common proof for Plaintiff’s claim that he was
23 required to work off-the-clock (“OTC”) and that some of that OTC work, if properly
24 accounted for, would have resulted in work to be compensated at overtime rates. In
25 fact, Defendant argues, time records do not provide common proof because, by
26 definition, they do not show such time. Defendant argues that one would have to
27 examine, and cross-examine for credibility, each individual’s separate claims of
28 supposed OTC work. Further, Defendant argues, each Class Member would need to

1 overcome this credibility hurdle in the face of his/her own time records, which show no
2 OTC work and further would have to prove that his/her individual manager knowingly
3 suffered or permitted the work.

- 4 • Defendant did not engage in any “willful” conduct as would be required for Plaintiffs
5 to recover waiting time penalties. Under the Labor Code, if an employer willfully fails
6 to pay an employee all wages due and owing at the time of separation, the employee is
7 owed up to 30 days’ wages as a penalty. Labor Code. §§ 201-203. A violation is
8 deemed willful if the employer intentionally fails to pay wages when they are due.
9 Notably, the failure to pay, by itself, cannot constitute willfulness where there is good
10 faith belief of compliance with the law at the time. *Barnhill v. Robert Saunders & Co.*,
11 125 Cal.App.3d 1, 8-9.
- 12 • Defendant contends that it is not liable for wage statement penalties based on the “good
13 faith” defense as set forth by the California Supreme Court in *Naranjo v. Spectrum*
14 *Sec. Servs., Inc.* (2022) 13 Cal. 5th 93 (holding that an employer's objectively
15 reasonable, good faith belief that it was providing compliant wage statements can
16 preclude the imposition of penalties under Labor Code section 226(e) for inaccurate
17 wage statements).
- 18 • There is a risk that the Court may consider Plaintiff’s claims as to Defendant’s alleged
19 failure to indemnify for business expenses to be individual in nature and unfit for class
20 wide resolution.

21 MM, ¶¶ 26, 28, 30, 32, 34, 36, 38.

22 As noted above, Defendant contests liability, as well as the propriety of certification,
23 and is prepared to vigorously oppose certification and to defend against Plaintiff’s claims if the
24 Action is not settled. Given the potential damages, as well as the substantial risks to recovery
25 discussed herein, including the uncertainties in achieving class certification, Plaintiff’s counsel
26 had to dramatically discount the value of the claims during settlement negotiations. As detailed
27 in the accompanying Declaration of Maralle Messrelian, Plaintiff’s counsel applied claim-
28 specific discounts to each category of claims to account for the risk of non-certification and

1 Defendant's defenses on the merits, arriving at a risk-adjusted total recovery of approximately
2 \$16,259,757. Defendant asserts that there are significantly lower prospects of recovery. If this
3 case advanced to trial and Class Counsel succeeded on all of Plaintiff's claims, attorney's fees
4 and costs may have significantly reduced the recovery awarded to the Class. Furthermore, there
5 is always a risk that a trial of this magnitude can become unmanageable, and Defendant has
6 represented that it has a limited ability to pay, which necessitated the installment payment
7 structure. A settlement of \$1,200,000 (approximately 1.8% of the maximum exposure and
8 approximately 7.4% of the risk-adjusted recovery) is a fair and reasonable result and a
9 proportion sanctioned by existing case law. With approximately 1,553 Settlement Class
10 members and 160,475 workweeks, the average Individual Settlement Payment is projected to
11 be approximately \$452.35, with individual payments ranging from approximately \$4.38 (based
12 on one Workweek) to approximately \$1,295.78 (for a Class Member who worked during the
13 entire Class Period). With approximately 1,266 Aggrieved Employees and approximately
14 52,401 PAGA Pay Periods during the PAGA Period, the average Individual PAGA Payment is
15 projected to be approximately \$19.75, with Individual PAGA Payments ranging from
16 approximately \$0.48 (based on one PAGA Pay Period) to approximately \$74.43 (for an
17 Aggrieved Employee who worked during the entire PAGA Period). MM, ¶¶ 40–41. *See In re*
18 *Cendant Corp., Derivative Action Litig.*, 232 F. Supp. 2d 327 (D. N.J. 2002) (approving
19 settlement that only provided a 2% recovery based on the estimated liability exposure). MM, ¶
20 39.

21 While Plaintiff believes the evidence gathered through Plaintiff's discovery supports the
22 merits of the claims asserted in this lawsuit, Plaintiff recognizes that continued litigation
23 presents significant risks that support a downward departure from Defendant's estimated
24 liability exposure. In view of the risks, the Settlement reflects Class Counsel's estimate of the
25 total amount of damages, monetary penalties or other relief that the class could reasonably
26 expect to be awarded at trial, taking into account the likelihood of prevailing and other
27 attendant risks. It also represents a fair, adequate, and reasonable compromise amount for these
28

1 claims and warrants preliminary approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-
2 55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3. MM, ¶ 39.

3 **2. Allocation of the PAGA Payment**

4 The settlement of PAGA penalties in the sum of \$100,000, of which 75% (\$75,000) will
5 be paid to the LWDA and 25% (\$25,000) will be distributed to the Aggrieved Employees, is
6 reasonable and appropriate under the circumstances. MM, ¶ 42. The Parties negotiated a good
7 faith amount for PAGA penalties to be paid to the LWDA and to the Settlement Class. *Id.* The
8 portion to be paid to the LWDA was not the result of self-interest at the expense of other Class
9 Members. *Id.* Where settlements “negotiate[] a good faith amount” for PAGA penalties and
10 “there is no indication that this amount was the result of self-interest at the expense of other
11 Class Members,” such amounts are generally considered reasonable. *Hopson v. Hanesbrands*
12 *Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133, at *9. Likewise, where
13 the employer did not act willfully, and made good faith attempts to comply with wage and hour
14 laws, a reduction or lesser penalty is warranted because imposing maximum PAGA penalty for
15 each violation would have been unjust, arbitrary, and oppressive. *Id. Carrington v. Starbucks*
16 *Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming trial court’s award of only 10% of
17 maximum PAGA penalty for meal break violations). *Id.* The amount to be paid to the LWDA
18 comports with PAGA settlement amounts approved by other courts. See, e.g., *Chu v. Wells*
19 *Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL 67245, 81 (approving PAGA
20 payment of \$7,500 to LWDA out of \$6.9 million common fund); *Lazarin v. Pro Unlimited, Inc.*
21 (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA payment of \$7,500 to LWDA
22 out of \$1.25 million common fund settlement); *Hopson v. Hanesbrands, Inc.* (N.D. Cal. Aug. 8,
23 2008) 2008 WL 3385452, at *1 (approving PAGA settlement of 0.3% or \$1,500); see
24 *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and
25 release that allocated \$0 to PAGA claim).

26 **3. Presence of Governmental Participant**

27 As required under Labor Code section 2699(1)(2), Plaintiff submitted a copy of the
28 Settlement to the LWDA at the same time this Motion was filed with the Court. MM, ¶ 52, Ex.

9.

4. Reaction of Class Members to Proposed Settlement

If the settlement is preliminarily approved, Class Members will be provided with the Class Notice (attached as Exhibit A to the Settlement) and an opportunity to object. MM, ¶ 48. The Parties' proposed notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the proposed settlement.

Id.

VI. THE SETTLEMENT FAIRLY, REASONABLY, AND ADEQUATELY COMPENSATES CLASS MEMBERS BECAUSE EACH CLASS MEMBER WILL BE PAID BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY COMPARED TO OTHER CLASS MEMBERS.

Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount and Aggrieved Employee Payment based on the number of Workweeks a Class Member worked during the Class Period and the number of PAGA Pay Periods an Aggrieved Employee worked during the PAGA Period, respectively. MM, ¶ 47; Settlement ¶ 46. Because this method compensates Class Members based on the extent of their potential injuries, in that Class Members who worked for Defendant longer would have been subject to more alleged violations, it is fair, adequate, and reasonable. *Id.*

VII. ALLOCATION FOR CLASS COUNSEL'S ATTORNEYS' FEES AND COSTS IS APPROPRIATE AND SHOULD BE PRELIMINARILY APPROVED.

Although the Settlement provides that Class Counsel may seek attorneys' fees of up to one-third of the GSA (\$400,000), Plaintiff requests only thirty percent (30%) of the GSA (\$360,000), with the reduction inuring to the benefit of the Class. The Settlement also provides for up to \$13,000.00 for actual reasonable litigation costs and expenses incurred in prosecuting the Action. Settlement ¶¶ 3, 39. These amounts are reasonable, given the facts and circumstances of the case. MM, ¶¶ 43-45.

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney

1 fee awards should be equivalent to fees paid in the legal marketplace to compensate for the
2 result achieved and risk incurred. *Laffitte v. Robert Half Intl, Inc.* (2016) 1 Cal.5th 480, 503
3 (citing *Lealao, supra*, 82 Cal.App.4th at p. 48-49). The Supreme Court has recently approved
4 fees equal to one-third (1/3) of the common fund. *Laffitte, supra*, 1 Cal. 5th 480. Many
5 courts have similarly approved fee awards equal to or greater than the percentage requested
6 here. *See, e.g., In re Pacific Enterprises* (9th Cir. 1995) 47 F.3d 373, 379 (award of 33% of
7 the common fund); *In re Activision* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (32.8% of the
8 common fund); *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494, 498 (45% of
9 settlement fund).

10 The amount of fees and costs requested are commensurate with (1) the risk Class
11 Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the
12 case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel
13 achieved, (5) the value of the Settlement Class Counsel achieved for the class, and (6) the other
14 cases Class Counsel turned down to devote time to this matter. MM, ¶ 44. Class Counsel met
15 and conferred with Defendant's counsel on numerous occasions, reviewed and analyzed
16 hundreds of pages of data and documents provided by Defendant, researched applicable law,
17 provided estimates of "damages" for purposes of settlement discussions, and engaged in a full
18 day of mediation, among other tasks. *Id.*

19 Class Counsel have borne all the risks and costs of litigation and will receive no
20 compensation until recovery is obtained. MM, ¶ 45. Class Counsel is well-experienced in
21 wage-and-hour class action litigation and used that experience to obtain a fair result for the
22 Class. *Id.* Considering the amount of the attorney fees requested, the work performed, and the
23 risks incurred, the requested fees and costs are reasonable and should be awarded. *Id.*

24 **VIII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT TO**
25 **PLAINTIFF IS FAIR, ADEQUATE, AND REASONABLE AND SHOULD BE**
26 **PRELIMINARILY APPROVED.**

27 Courts routinely approve enhancement awards to compensate named plaintiffs for the
28 services they provide and the risks they incur during class action litigation, often in much

1 higher amounts than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115
2 Cal.App.4th 715, 726 (upholding “service payments” to named plaintiffs for their efforts in
3 bringing the case); *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294
4 (approving \$50,000 enhancement award). The Settlement provides that Plaintiff may seek a
5 Class Representative Enhancement Payment of \$10,000.00. This amount is entirely reasonable
6 given Plaintiff’s efforts in this action and the risks he undertook on behalf of Class Members.
7 MM, ¶ 46. To date, Plaintiff has devoted approximately 25 hours advancing the interests of the
8 Settlement Class. Plaintiff has done this by, among other things, retaining experienced counsel,
9 providing them with information about his work history with Defendant and Defendant’s
10 policies and practices with respect to the wage and hour claims at issue, and being actively
11 involved in the settlement process to ensure a fair result for the Settlement Class as a whole. In
12 doing this, Plaintiff has been exposed to significant risks, including the risk of an order to pay
13 Defendant’s attorneys’ fees and costs if this action had been unsuccessful (*See* Labor Code §§
14 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement Class
15 shows that the proposed Class Representative Enhancement Payment is fair, adequate, and
16 reasonable, and thus warrants preliminary approval. MM, ¶ 46; *See generally* Declaration of
17 Jose Alarcon.

18 **IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS ARE FAIR**
19 **AND REASONABLE AND SHOULD BE PRELIMINARILY APPROVED.**

20 With regard to the settlement administration costs provision, it is reasonable. Plaintiff’s
21 counsel solicited competitive bids from three reputable third-party administrators: Phoenix
22 Settlement Administrators (\$14,500), ILYM Group, Inc. (\$14,950), and CPT Group, Inc.
23 (\$18,500). Phoenix Settlement Administrators submitted the lowest bid and was selected. The
24 qualifications, experience, data-security procedures, and insurance of Phoenix Settlement
25 Administrators are set forth in the concurrently-filed Declaration of Michael Moore. MM, ¶ 50,
26 Exs. 6-8. Thus, the settlement administration costs provision should be given preliminary
27 approval.

28 ///

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1 **X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN**
2 **SHOULD BE APPROVED BECAUSE IT IS REASONABLY CALCULATED**
3 **TO GIVE ACTUAL NOTICE TO CLASS MEMBERS AND SUFFICIENT**
4 **TIME TO EXERCISE THEIR RIGHTS**

5 This Court should approve the proposed plans for giving notice to the Settlement Class
6 and administering the Settlement. The standard for determining the adequacy of notice is
7 whether the notice has “a reasonable chance of reaching a substantial percentage of the class
8 members.” *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes
9 multiple measures to ensure that as many Class Members as practicable receive actual notice of
10 the Settlement and have enough time to exercise their rights. The Settlement requires
11 distribution of the Notice by First Class U.S. mail only. Settlement, ¶ 50. Although there are
12 current employee Class Members, it is uncertain whether Defendant’s records of their contact
13 information include email addresses and Class Members, who perform all of their work away
14 from a desk, are not in a position to check their emails. As such, notice by mail alone is fair,
15 adequate, and reasonable. MM, ¶ 48.

16 With respect to its content, “[The] notice given to the class must fairly apprise the class
17 members of the terms of the proposed compromise and of the options open to dissenting class
18 members.” *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152.
19 The purpose of the notice in class settlement context is to give class members sufficient
20 information to decide whether they should accept the benefits offered, opt out and pursue their
21 own remedies, or object to the settlement. *Id.* The Class Notice (Exhibit A to the Settlement)
22 provides Class Members with all pertinent information that they need to fully evaluate their
23 options and exercise their rights under the Settlement. Each Class Notice will provide: (a)
24 information regarding the nature of the Action; (b) a summary of the Settlement’s principal
25 terms; (c) the Settlement Class and Aggrieved Employee definitions; (d) the total number of
26 Workweeks and PAGA Pay Periods each respective Class Member and Aggrieved Employee
27 worked for Defendant during the Class Period and PAGA Period; (e) each Class Member’s and
28 Aggrieved Employee’s estimated Individual Settlement Payment and the formula for
 calculating Individual Settlement Payments; (f) the dates which comprise the Class Period and

1 PAGA Period; (g) instructions on how to submit Requests for Exclusion or Notices of
2 Objection; (h) the deadlines by which the Class Member must postmark or email Request for
3 Exclusions, or postmark Notices of Objection to the Settlement; and (i) the claims to be
4 released. Settlement, ¶ 52. Accordingly, the Notice should be approved because it describes the
5 Settlement with sufficient clarity and specificity to explain to Class Members what this action
6 is about, their rights under the Settlement, and how to exercise those rights. MM, ¶ 48.

7 **XI. CONCLUSION**

8 For the reasons stated above, this Court should grant Plaintiff's Motion in its entirety
9 and adopt the proposed order submitted concurrently herewith.

10 Respectfully submitted,

MM LAW, APC

11
12 Dated: July 16, 2026

13 By: Maralle Messrelian
14 MARALLE MESSRELIAN
15 Attorney for Plaintiff,
16 JOSE ALARCON aka PORFIRIO CRUZ
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Maralle Messrelian <maralle@mmlawapc.com>

Superior Court of California, County of Orange - Motion Reservation Request - CONFIRMATION

1 message

donotreply@occourts.org <donotreply@occourts.org>
To: maralle@mmlawapc.com

Wed, Jul 15, 2026 at 8:42 PM



Reserve a Motion Date

Your reservation request has been CONFIRMED by the Superior Court. The hearing date and time below has been reserved. You will be asked to provide your reservation number to the court at a later date.

MOVING PAPERS MUST BE E-FILED WITHIN 24 HOURS AFTER COMPLETING THE ON-LINE RESERVATION.
Failure to submit your moving papers within 24 hours will result in the automatic CANCELLATION of the reservation.

NOTE: To expedite your motion, please place the appropriate Court Reservation number (e.g. 7XXXXXXX) on each Motion being submitted. If multiple motions are submitted on one document, all reservations numbers must be listed on the face page of the pleading.

Please do not reply to this email.

Reservation Number:	74903335
Hearing Date:	October 08, 2026
Hearing Time:	2:00 PM
Department:	CX102
Motion Type:	Motion for Approval of Class Settlement
Case Number:	30-2024-01371907-CU-OE-CXC
Case Title:	Alarcon vs. Villa Park Landscape
Judicial Officer:	Layne H. Melzer
Email:	maralle@mmlawapc.com
Requestor Name:	Maralle Messrelian
Requestor Phone:	818-940-4636
Filing Party:	Jose Alarcon
Date of Request:	July 15, 2026
Time of Request:	8:40 PM
Transaction Number:	1000628750

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