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8 Attorneys for Plaintiff,  
9 LEONARDO ORTEGA on behalf of himself  
10 and all similarly aggrieved employees

11 **SUPERIOR COURT OF CALIFORNIA**

12 **COUNTY OF MONTEREY**

13 LEONARDO ORTEGA, on behalf of  
14 himself and all similarly aggrieved  
15 employees,

16 Plaintiff,

17 v.

18 BALESTERI CONSTRUCTION, INC.; and  
19 DOES 1 through 50, inclusive,

20 Defendants.

Case No. 23CV003755

21 **DECLARATION OF B. JAMES**  
22 **FITZPATRICK IN SUPPORT OF**  
23 **PLAINTIFF'S MOTION FOR FINAL**  
24 **APPROVAL OF SETTLEMENT**

25 Date: October 24, 2025

26 Time: 8:30 a.m.

27 Dept: 15

1 I, B. James Fitzpatrick, hereby declare and state as follows:

2 1. I am an attorney duly admitted to practice in the State of California and am a  
3 partner in the law firm of Fitzpatrick & Swanston, counsel of record for Plaintiff Leonardo  
4 Ortega ("Plaintiff"). I have personal knowledge of the facts set forth below and if called to  
5 testify I could and would do so competently.

6 2. Class Counsel support the settlement as fair, reasonable, and adequate, and in the  
7 best interest of the Settlement Class Members as a whole.

8 3. The Settlement Agreement was the product of negotiations between highly able  
9 and experienced attorneys on both sides who possessed the relevant data and extensive  
10 information which they had carefully analyzed. Over many years in highly contested litigation  
11 the Parties engaged in extensive investigation and discovery, involving formal and informal  
12 discovery, and in arm's length negotiations at mediation with an experienced neutral that  
13 resulted in the settlement.

14 4. There were no objections by Settlement Class Members to the amount of  
15 attorneys' fees or litigation costs. Furthermore, zero opt-outs were submitted. In light of this  
16 overwhelmingly positive response from Settlement Class Members, an inference can be made  
17 that the Settlement Class supports the Court's Preliminary Approval Order finding that the  
18 Settlement Agreement is fair and reasonable.

19 **I. KEY TERMS OF THE SETTLEMENT**

20 The Settlement is all-inclusive, and its key terms include:

21 3. **Class:** All current and former non-exempt employees of Defendant who were  
22 employed in the State of California at any time during the period commencing on November  
23 16, 2019, and ending on November 16, 2023. (Settlement, ¶¶ 4, 8.)

24 4. **Aggrieved Employee:** All current and former non-exempt employees of  
25 Defendant who were employed in the State of California at any time during the period  
26 commencing on October 24, 2022, and ending September 28, 2023. (Settlement, ¶¶ 23, 26.)

27 5. **Participating Class Members:** a Class Member who does not opt out of the  
28 class action portion of the settlement by submitting a valid request for exclusion. (Settlement,

¶ 28.)

6. There are 63 Class Members who did not submit timely and valid Requests for Exclusion and are therefore deemed Participating Class Members, representing 100% of the Class. Participating Class Members have worked a collective total of 3,646 workweeks during the Class Period. (Admin Decl. ¶ 10.)

7. **Individual Class Payments:** a Participating Class Member's pro rata share of the Net Settlement Amount calculated based upon the number of workweeks employed during the Class Period. The Parties have agreed that twenty percent (20%) of each Individual Settlement Payment shall be classified as wages, and the remaining eighty percent (80%) shall be penalties and interest. (Settlement, ¶¶ 45.d.i and 45.d.iii.)

8. The highest Individual Settlement Payment to be paid is approximately \$2,532.00, the lowest Individual Settlement Payment to be paid is approximately \$24.23, while the average Individual Settlement Payment to be paid is approximately \$701.12. (Admin Decl. ¶ 12.)

9. **Individual PAGA Payments:** an Aggrieved Employee's pro rata share of the 25% of the PAGA Penalties calculated based upon the number of pay periods worked during the PAGA Period. The Parties have agreed that one hundred percent (100%) of the Individual PAGA Payment shall be classified as penalties. (Settlement, ¶ 45.d.viii.)

10. There are 32 PAGA Members who worked a total of 1,011 pay periods during the PAGA Period. The highest Individual PAGA Payment to be paid is approximately \$29.67, and the average Individual PAGA Payment to be paid is approximately \$19.53. (Admin Decl. ¶ 13.)

11. **Gross Settlement Amount:** means \$82,500.00, which is the total amount Defendant agrees to pay under the Settlement, excluding Defendant's share of payroll taxes, excluding the Confidential Individual Settlement, and subject to the escalator provision in this Settlement. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Costs, Class Representative Service Payment, and the Administration

Expenses Payment. (Settlement, ¶¶ 16, 45.d.)

12. **Attorney's Fees and Litigation Costs:** the fees and out-of-pocket costs reasonably incurred by Class Counsel. Subject to Court approval, Defendant will not object to Class Counsel's application for attorney's fees not to exceed ~30.3% of the Gross Settlement Amount, which is \$25,000.00, and reimbursement of actual litigation costs. (Settlement, ¶¶ 6, 7, 45.d.vi.)

13. Class Counsel's application for an award of attorneys' fees in the amount of \$25,000.00 and reimbursement of litigation costs in the amount of \$3,329.26 is reasonable and fair. These amounts are well within what is reasonable and customary in both wage and hour settlements and class action settlements in general and is based on the skill displayed by Class Counsel, the effort and resources invested in this case by Class Counsel, the factual and legal complexities of this case, the importance of the interests which are the subject of this litigation, the risks undertaken by Class Counsel, and the degree of success achieved by Class Counsel.

14. **Service Award:** Defendant agrees not to oppose or impede any application or motion by Plaintiff for Service Award of up to Two Thousand Five Hundred Dollars (\$2,500.00). (Settlement, ¶¶ 10, 45.d.viii.)

15. The Settlement Agreement authorized Plaintiff to request a Class Representative Service Award for serving as the Class Representative. Plaintiff provided significant assistance with the lawsuit, including providing information and documents, discussing the lawsuit on multiple occasions, remaining available during mediation, reviewing various documents, including the complaints, declarations, Memorandum of Understanding, and the Settlement Agreement.

16. Plaintiff has no interests adverse to the Settlement Class, nor have any such issues been raised or presented. Plaintiff has taken all necessary steps to represent the interests of the Settlement Class.

17. Plaintiff and Defendant have agreed to resolve Plaintiff's individual claims

1 through a separate Confidential Settlement Agreement and Release of Claims<sup>1</sup> (referred to as  
2 the “Confidential Individual Settlement”). This agreement was finalized after the Parties  
3 reached a tentative resolution for the class and PAGA claims, which have already received  
4 preliminary approval from this Court. The order of these negotiations was intentional,  
5 designed to protect the interests of the class and PAGA members.

6 18. **Settlement Administration Costs:** the costs incurred by the Settlement  
7 Administrator, Phoenix Settlement Administrators. The settlement administration costs total  
8 \$5,000.00. Any portion of the Settlement Administration Costs not used or approved by the  
9 Court shall be added to the Net Settlement Amount. (Settlement, ¶¶ 32, 45.d.v.)

10 19. **Net Settlement Amount:** the Gross Settlement Amount, less the following  
11 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA  
12 PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class  
13 Counsel Costs Payment, and the Administration Expenses Payment. The remainder is to be  
14 paid to Participating Class Members as Individual Class Payments. (Settlement, ¶¶ 20, 45.d.)

15 **II. THE REQUESTED ATTORNEY’S FEES AND COSTS ARE FAIR AND**  
16 **REASONABLE**

17 20. I am familiar with all aspects of this case and all tasks undertaken by the various  
18 members of this firm in litigating this case. I have spent significant time pursuing the claims  
19 that have been alleged in this action since the commencement of the case. I have been assisted  
20 by attorney Alison L. Baker and several paralegals in my office. As a result of my firm’s  
21 diligence in pursuing the factual and legal issues presented by this case, we were able to  
22 realistically assess the Class Members’ claims, evaluate their damages, and Defendant’s  
23 exposure. All work performed by our office is done on a contingency basis. Our firm has  
24 received no compensation for the time invested or expenses incurred in litigating this case.  
25 We have prosecuted this litigation up to this point, taking the risk that we ultimately would not  
26 receive any compensation for our work. My office will have invested 57.8 hours (53 attorney  
27 hours + 4.8 paralegal hours) in this case, which includes anticipated future time. Attached

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<sup>1</sup> I will provide a copy of the Confidential Individual Settlement to the Court upon request.

1 hereto as **Exhibit A** is a detailed summary of tasks and hours spent by this firm in litigating  
2 this case.

3 21. The hourly rate for attorneys in this firm is \$800.00, and the hourly rate for  
4 paralegals is \$185.00. Since at least 2020, I have been approved at hourly rates of \$750.00  
5 and \$800.00 per hour by various Courts, in several matters, including, in the matters entitled:  
6 *Jose Antonio Ortiz Arrellano v. Rocha Brothers Farms, LLC*, Santa Cruz County Superior  
7 Court, Case No. 21CV01286; *Sione Fuapau v. LHOIST North America of Arizona, Inc.*,  
8 United States District Court, Northern District of California, Case No. 20-CV-04404-VKD;  
9 *Sandra Lopez v. Motel 6 Operating, L.P.*, Ventura County Superior Court Case No. 56-2020-  
10 00542312-CU-OE-VTA; *Christina Mendoza v. Planned Parenthood Mar Monte, Inc.*, Santa  
11 Clara Superior Court, Case No. 18CV329544; *Javier Mendoza v. National Vision, Inc.*, United  
12 States District Court, Northern District of California, Case No. 19-CV-01485-SVK; *Valarie*  
13 *Murray v. Granite Wellness Centers*, Nevada County Superior Court, Case No. CU20-084680;  
14 *Nicolas Serafica v. HGST, Inc.*, Santa Clara County Superior Court Case No. 21CV386574;  
15 and *Curtis White v. Cortech West Staffing, LLC*, San Joaquin County Superior Cort, Case No.  
16 STK-CV-UOE-2023-0000029.

17 22. In this motion, I request an attorney hourly rate of \$595.00. Accordingly, the  
18 total lodestar for attorney hours will be approximately \$31,535.00 [\$595.00 x 53 attorney  
19 hours].

20 23. Having represented both employees and employers during my practice, I am  
21 familiar with the contingent fee market throughout Northern California, where I primarily  
22 practice law, and in other areas of the state in which my firm regularly litigates. Considering  
23 our experience and my knowledge of the market, I believe that the hourly rates charged by my  
24 firm, and previously approved by this Court, are fair and reasonable and less than those  
25 charged by my colleagues in other areas of California and the national market for prosecuting  
26 class actions.

27 24. Class Counsel risked not only a great deal of time, but also significant expense  
28 to ensure the successful litigation of this action on behalf of all employees. In addition to the

1 supporting documentation and legal authority presented in Plaintiff's moving papers, Class  
2 Counsel submits that the attorneys' fees proposed are not just fair and reasonable; they are  
3 necessary in order to incentivize attorneys to take on the risk of time and expense associated  
4 with Class actions. Indeed, many times counsel expend enormous amounts of work and out of  
5 pocket costs in the interest of aggrieved employees and/or the State of California, only to end  
6 up without any recovery whatsoever. For example, Class Counsel expended significant time  
7 and expenses in a wage/hour class and PAGA action, only to have the District Court grant  
8 summary judgment in its entirety against plaintiff. See *Guynn-Neupane*, 2021 WL 4481661  
9 (N.D. Cal. Sep. 30, 2021). There are actual risks that Plaintiffs request this Court take into  
10 account when considering the requested attorneys' fees, including any multiplier to be  
11 accounted into Plaintiff's lodestar.

12 25. My firm has incurred \$3,255.01 in litigation costs to date and anticipates an  
13 additional \$65.25 related to this motion, \$4.50 related to the notice of entry, and \$4.50 related  
14 to the final accounting declaration, bringing the total to \$3,329.26. All costs were reasonable  
15 and necessary to the effective prosecution of this matter. Counsel advanced costs without  
16 guarantee that any of the advanced costs would be recovered. Attached as **Exhibit B** is a copy  
17 of the litigation costs incurred by my firm as of the filing of this motion related to this lawsuit.

### 18 **III. EXPERIENCE AND QUALIFICATIONS**

19 26. I received my bachelor's degree from the University of California, Santa Barbara  
20 and my Juris Doctor degree from the University of Santa Clara School of Law. I have  
21 practiced law since 1987. The primary emphasis of my practice is employment litigation. I  
22 have represented both employers and employees. Over 15 years ago, my office commenced  
23 handling plaintiff class action wage and hour cases. Since then, my office has handled  
24 hundreds of wage and hour cases to conclusion and has been class counsel and/or co-counsel  
25 in over 100 class actions. My firm currently has wage and hour cases in Alameda County  
26 Superior Court, Monterey County Superior Court, Nevada County Superior Court, Santa Clara  
27 Superior Court, San Benito Superior Court, San Bernardino County Superior Court, San  
28 Joaquin County Superior Court Santa Cruz Superior Court, Ventura County Superior Court,

1 and the United States District Courts for the Eastern and Northern District of California.

2 27. I do not have a conflict of interest with Plaintiff or the Class Members. I will  
3 adequately represent the Class. I have and will zealously represent Plaintiff and the Class  
4 Members and pursue this lawsuit to its conclusion.

5 28. I do not have any relationship with the proposed *cy pres* recipient that would  
6 create an actual or potential conflict of interest. The Parties further agree that proposed *cy*  
7 *pres* satisfies the legislative intent set out in Code of Civil Procedure § 384(a), in that the  
8 organization helps further the purposes of the underlying action and promote justice for all  
9 Californians.

10 29. On November 6, 2024, Plaintiff uploaded his Motion for Preliminary Approval  
11 of Class Action Settlement and Settlement Agreement to the LWDA. As of the filing of this  
12 motion, the LWDA has not objected to the proposed settlement. On October 2, 2025, Plaintiff  
13 uploaded this motion and proposed order to the LWDA.

14 I declare under penalty of perjury under the laws of the State of California that the  
15 foregoing is true and correct and if called as a witness I could and would competently testify to  
16 each of the matters stated herein, and I state that these matters are based upon my own  
17 personal knowledge acquired through first-hand observation, except where stated otherwise.  
18 This declaration was executed by me on October 2, 2025, in Salinas, California.

19 /s/ B. James Fitzpatrick

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21 B. James Fitzpatrick  
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## **EXHIBIT A**

## **TASKS AND HOURS**

**The tasks referenced below involved work by attorneys and paralegals. The amount of time each spent is detailed below.**

### **I. INVESTIGATION**

#### **Task**

- Meetings/telephonic conferences with client regarding his employment and alleged violations;
- Review of documents provided by client;
- Request, receive, and review personnel file;
- Numerous intra-office meetings/conferences regarding planning, results and details of investigations;
- Research for other lawsuits;
- Research for other LWDA notices;
- Legal research regarding IWC Wage Orders;
- Legal research regarding claims that would be alleged in the complaint; and
- Prepare, finalize, and serve LWDA notice.

Attorney Hours: 12

Paralegal Hours: 0.9

### **II. PLEADINGS / CASE MANAGEMENT**

#### **Task**

- Prepare and file Civil Case Cover Sheet, Summons, and Complaint;
- Receive and review Court's 11/16/23 Case Management Information & Setting;
- Prepare and file FAC;
- Prepare, file, and serve Notice of Settlement;
- Receive and review Def's Notice of Jury Deposit; and
- Receive and review Def's Notice of Remote Appearance.

Attorney Hours: 2.5

Paralegal Hours: 0.4

### **III. MEDIATION**

#### **Task**

- Numerous meetings/conferences;
- Follow-up meetings/conferences with client regarding claims;
- Receive, review, and analyze informal discovery and data;
- Receive and review damage models;
- Legal research;
- Receive, review and revise mediation brief;
- Prepare for and attend mediation;
- Receive and review Memorandum of Understanding; and
- Meet with client to review Memorandum of Understanding.

Attorney Hours: 26.5

Paralegal Hours: 2

### **IV. MATTERS RELATING TO MOTION FOR PRELIMINARY APPROVAL**

#### **Task**

- Review and revise settlement stipulation;
- Meet with client to review the settlement agreement;
- Receive and revise drafts of the notice materials;
- Receive and review motion for preliminary approval;
- Prepare supporting declarations;
- Prepare for and attend hearing;
- Prepare, file, and serve supplemental declaration and amended [proposed] order;
- Receive and review Order;
- Forward Order to Settlement Administrator;
- Receive, review, and approve Spanish translation of Class Notice;
- Receive and review weekly notices from Settlement Administrator

Attorney Hours: 7.5

Paralegal Hours: 1

**V. MATTERS RELATING TO MOTION FOR FINAL APPROVAL**

**Task**

- Meetings/telephonic conferences with client regarding declaration in support of service award;
- Conference with Settlement Administrator;
- Receive and revise drafts of motion for final approval;
- Prepare supporting declarations;
- Anticipated multiple communications regarding the status of the final approval hearing and distribution of payment.

Attorney Hours: 4.5

Paralegal Hours: 0.5

## **EXHIBIT B**

## Cost/Expense Detail

| Date                              | Code | Check # | Type | Units | Amount          | Description                           | Date Billed | Amount Billed |
|-----------------------------------|------|---------|------|-------|-----------------|---------------------------------------|-------------|---------------|
| <b>O0023 Ortiz, Leonardo</b>      |      |         |      |       |                 |                                       |             |               |
| <b>600 Labor &amp; Employment</b> |      |         |      |       |                 |                                       |             |               |
| 10/23/23                          | 15   | 1250    | Exp. |       | 1,625.00        | Fenton & Keller Mediation Fee         |             |               |
| 10/24/23                          | 102  |         | Cost |       | 75.00           | LWDA, PAGA Filing Fee                 |             |               |
| 11/16/23                          | 102  |         | Cost |       | 1,478.06        | Complaint; Complex Fee & eFiling Fees |             |               |
| 3/15/24                           | 102  |         | Cost |       | 3.60            | Odyssey Efile                         |             |               |
| 3/21/24                           | 102  |         | Cost |       | 3.60            | Odyssey Efile                         |             |               |
| 11/8/24                           | 102  |         | Cost |       | 65.25           | Motion                                |             |               |
| 4/4/25                            | 102  |         | Cost |       | 4.50            | Odyssey Efile                         |             |               |
| <b>Matter Total</b>               |      |         |      |       | <b>3,255.01</b> |                                       |             | <b>.00</b>    |
| <b>Client Total</b>               |      |         |      |       | <b>3,255.01</b> |                                       |             | <b>.00</b>    |
| <b>Report Total:</b>              |      |         |      |       |                 |                                       |             |               |
| <b>Total</b>                      |      |         |      |       | <b>3,255.01</b> |                                       |             | <b>.00</b>    |

Types: Unbilled Costs, Unbilled Expenses, Billed Costs, Billed Expenses

Selection criteria: Client: O0023 Matter: 600

Sorted by: Client Number / Matter Number