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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN DIEGO**

12 EFRAIN FLORES FLORES, individually, and
on behalf of all others similarly situated,

13 *Plaintiff,*

14 v.

15 PACIFIC GREEN LANDSCAPE, INC., a
16 California corporation; and DOES 1 through 10,
inclusive,

17 *Defendants.*

Case No.: 37-2023-00054631-CU-OE-CTL

*[Assigned for All Purposes to the Hon. Blaine
K. Bowman, Dept. 74]*

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

Preliminary Approval Hearing:

Date: February 20, 2026

Time: 8:30 a.m.

Dept: 74

Action Filed: December 18, 2023

1 **TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on February 20, 2026, at 8:30 a.m., in Department 74 of the
3 Superior Court of California, County of San Diego, Hall of Justice, located 330 West Broadway,
4 San Diego, California 92101, pursuant to California Code of Civil Procedure § 382 and California
5 Rules of Court, Rule 3.769, *et seq.*, Plaintiff Efrain Flores Flores (“Plaintiff”) will move the Court
6 for an Order granting preliminary approval of the proposed class action settlement between
7 Plaintiff and Defendant Pacific Green Landscape, Inc. (“Defendant”). Plaintiff further moves the
8 Court for an Order:

- 9 1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement
10 and Class Notice;
- 11 2. Certifying a Class for settlement purposes;
- 12 3. Approving the Notice and the plan for distribution of the Notice;
- 13 4. Appointing Plaintiff Efrain Flores Flores as Class Representative for settlement
14 purposes;
- 15 5. Appointing Plaintiff’s Counsel, Arrash T. Fattahi, Arman A. Salehi, Emily K. Borman,
16 and Courtney M. Miller of Wilshire Law Firm, PLC, as Class Counsel for settlement
17 purposes;
- 18 6. Appointing Phoenix Settlement Administrators as the Settlement Administrator;
- 19 7. Granting Plaintiff leave to amend to file a First Amended Complaint; and
- 20 8. Scheduling a final approval hearing.

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The motion will be based upon this notice, the attached memorandum of points and authorities, the Declaration of Arrash T. Fattahi filed concurrently herewith, the records and files in this action, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: January 23, 2026

WILSHIRE LAW FIRM, PLC

By: /s/ Courtney M. Miller

Arrash T. Fattahi

Arman A. Salehi

Emily K. Borman

Courtney M. Miller

Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Efrain Flores Flores (“Plaintiff”) seeks preliminary approval of a proposed \$1,100,000.00 non-reversionary, wage and hour class action settlement with Defendant Pacific Green Landscape, Inc. (“Defendant,” and together with Plaintiff, the “Parties”). This motion for preliminary approval is unopposed. The Settlement will provide substantial monetary payments to approximately 993 class members. And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, discovery, and negotiations. The negotiations were at arm’s length and were facilitated by an experienced class action mediator, Monique Ngo-Bonnici, Esq., over the course of one-and-a-half days of mediation. After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses, the Parties reached a settlement. Accordingly, Plaintiff requests that the Court preliminarily approve the proposed Settlement, certify the proposed settlement class, approve the proposed Class Notice, and set a final approval hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff’s Claims

This is a wage and hour class action and anticipated representative action pursuant to the Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §§ 2699, *et seq.*) Plaintiff and putative class members were employed by Defendant in California and classified as hourly-paid non-exempt employees who worked for Defendant during the class period. (Declaration of Arrash T. Fattahi in Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement [“Fattahi Decl.”] at ¶ 2.) Defendant provides comprehensive commercial landscaping services for businesses, homeowners associations, and other large-scale properties. (*Id.*) Defendant’s services include design, installation, maintenance, and water management. (*Id.*)

Plaintiff alleges that Defendant’s payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. (Fattahi Decl. at ¶ 3.) Plaintiff alleges that Defendant failed to pay for all

1 hours worked. (*Id.*) Plaintiff further alleges that Defendant failed to provide employees with legally
2 compliant meal and rest periods, and Defendant failed to reimburse business expenses. (*Id.*) Based
3 on these allegations, Plaintiff asserts related claims for failure to provide accurate wage statements,
4 failure to pay all final wages at termination, unfair business practices, and civil penalties under
5 PAGA. (*Id.*)

6 On December 18, 2023, Plaintiff filed a putative wage and hour class action complaint
7 against Defendant for: (1) failure to pay minimum and straight time wages; (2) failure to pay
8 overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest
9 periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate
10 itemized wage statements; (7) failure to indemnify employees for expenditures; and (8) unfair
11 business practices. (Fattahi Decl. at ¶ 4.)

12 On January 16, 2024, Plaintiff sent a notice to Defendant and the California Labor &
13 Workforce Development Agency (“LWDA”) alleging similar wage and hour violations
14 pursuant to PAGA. (Fattahi Decl. at ¶ 4, Ex. 1.) On January 17, 2025, Plaintiff filed a
15 representative action against Defendant in the Superior Court of California, County of San
16 Diego, Case No. 25CU003186C (“PAGA Action”), which is pending before the Honorable
17 Gregory W. Pollack. (Fattahi Decl. at ¶ 4.) As part of this Motion, Plaintiff requests leave to
18 amend to file a First Amended Complaint to add a cause of action for civil penalties under
19 PAGA. (*Id.*)

20 **B. Discovery and Investigation**

21 Following the filing of the initial complaint, the Parties exchanged documents and
22 information before mediating this action. (Fattahi Decl. at ¶ 5.) Defendant produced a sampling
23 of timekeeping and pay records for the class members. (*Id.*) Defendant also provided its policy
24 manual in effect during the class period and information regarding the total number of current
25 and former employees in its informal discovery responses. (*Id.*)

26 After reviewing documents regarding Defendant’s employment policies and practices
27 and analyzing Defendant’s timekeeping and payroll records, Class Counsel was able to evaluate
28 the probability of class certification and success on the merits and assess Defendant’s maximum

monetary exposure for all claims. (Fattahi Decl. at ¶ 6.) Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Class Counsel reviewed these records and utilized an expert to prepare a damages analysis prior to mediation. (*Id.*)

C. Settlement Negotiations

On February 3, 2025, and May 2, 2025, the Parties participated in a private mediation with experienced class action mediator, Monique Ngo-Bonnici, Esq. (Fattahi Decl. at ¶ 7.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached a settlement, the material terms of which are encompassed within the Settlement. (*Id.* at ¶ 8, **Ex. 3** [Class Action and PAGA Settlement Agreement and Class Notice].)

Class Counsel has conducted a thorough investigation into the facts of this case. (Fattahi Decl. at ¶ 13.) Based on the Parties' informal exchange of documents and information and Class Counsel's own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members in light of all known facts and circumstances, the risk of significant delay, the defenses that could be asserted by Defendant both to certification and on the merits, trial risk, and appellate risk. (*Id.*)

Indeed, the \$1,100,000.00 Settlement represents approximately **106%** of the **realistic maximum recovery** of \$1,034,727.15. (Fattahi Decl. at ¶ 22.) Although Class Counsel estimated that Defendant's maximum potential liability for all claims was approximately \$11,215,709.17, when the risk of prevailing at certification and trial are factored into the equation, Class Counsel believes that Defendant's realistic exposure was approximately \$1,034,727.15, meaning the Settlement achieves a significant recovery. (*Id.* at ¶¶ 13-26.)

1 Considering the risk and uncertainty of prevailing at class certification and at trial, this is an
2 excellent result for the Class. (*Id.* at ¶ 22.) Indeed, because of the proposed Settlement, class
3 members will receive timely, guaranteed relief and will avoid the risk of an unfavorable
4 judgment. (*Id.*)

5 **D. Key Terms of the Proposed Settlement**

6 The Settlement’s key terms include:

7 1. Class Definition: For settlement purposes only, the Parties agree to the certification
8 of a class pursuant to California Code of Civil Procedure § 382 defined as: “all persons employed
9 by Defendant in California and classified as an hourly-paid non-exempt employee who worked for
10 Defendant during the Class Period.” (Settlement, § 1.5.)

11 2. Class Period: “means the period from June 23, 2019, to July 30, 2025.” (Settlement,
12 § 1.12.)

13 3. Class Member or Settlement Class Member: “means a member of the Class, as either
14 a Participating Class Member or Non-Participating Class Member (including a Non-Participating
15 Class Member who qualifies as an Aggrieved Employee).” (Settlement, § 1.9.)

16 4. Aggrieved Employee: “means a person employed by Defendant in California and
17 classified as an hourly-paid non-exempt employee who worked for Defendant during the PAGA
18 Period.” (Settlement, § 1.4.)

19 5. PAGA Period: “means the period from January 16, 2023, to July 30, 2025.”
20 (Settlement, § 1.30.)

21 6. Gross Settlement Amount: “means \$1,100,000.00 which is the total amount
22 Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross
23 Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments,
24 the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative
25 Service Payment, and the Administrator’s Expenses.” (Settlement, § 1.21.) “Except as otherwise
26 provided by Paragraph 8 below, Defendant promises to pay \$1,100,000.00 and no more as the
27 Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the
28 Wage Portions of the Individual Class Payments.” (Settlement, § 3.1.)

1 7. Uncashed Checks: Any settlement checks remaining uncashed after 180 days shall
2 be cancelled and the funds represented by such checks shall be transmitted to the California
3 Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no
4 "unpaid residue" subject to the requirements of California Code of Civil Procedure section 384,
5 subdivision (b). (Settlement, §§ 4.4.1, 4.4.3.)

6 8. Released Class Claims:

7 As of the date Defendant funds the Gross Settlement Amount, all Class Members who do
8 not properly opt-out of the Settlement will fully and finally release the Released Parties
9 from any and all Class Released Claims (defined below) that arose during the Class Period.
10 The Class Released Claims include all claims asserted in the Lawsuit, as amended, and/or
11 arising from or related to the facts and claims alleged in the Lawsuit, as amended. The Class
12 Released Claims include all claims for unpaid wages, including, but not limited to, failure
13 to pay minimum wages, straight time compensation, overtime compensation, double-time
14 compensation, and interest; the calculation of the regular rate of pay;
15 missed/short/late/interrupted meal period, rest period, and/or recovery period
16 wages/premiums; failure to provide meal periods; failure to authorize and permit rest
17 periods and/or recovery periods; the calculation of meal period, rest period, and/or recovery
18 period premiums; payment for all hours worked, including off-the-clock work; wage
19 statements; deductions; failure to reimburse business expenses; failure to pay wages timely
20 during employment; failure to pay all wages due upon separation; unfair business practices;
21 penalties, including, but not limited to, recordkeeping penalties, wage statement penalties,
22 minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs. The
23 Class Released Claims include all claims arising out of the Lawsuit under the California
24 Labor Code (including 201; 202; 203; 204; 218.5; 218.6; 226(a); 226(e); 226(h); 226.7;
25 2802(b); 2802(c); 510; 512; 1174(d); 1194(a); 1194.2; 1197; 1198.); the Wage Orders of
26 the California Industrial Welfare Commission; and California Business and Professions
27 Code section 17200, et seq. This release excludes the release of claims not permitted by
28 law.

19 (Settlement, § 5.2.)

20 9. Released PAGA Claims:

21 All Non-Participating Class Members who are Aggrieved Employees, including those
22 who timely and effectively exclude themselves from the Settlement Class, shall
23 nevertheless be bound by the Released PAGA Claims (defined herein below) and shall
24 receive a pro rata portion of 25% of the PAGA penalties. All Aggrieved Employees, on
25 behalf of themselves and their respective former and present representatives, agents,
26 attorneys, heirs, administrators, successors, assigns, and the LWDA, shall release the
27 Released Parties from all known and unknown claims for civil penalties under PAGA that
28 were alleged, or could have been alleged, in the Lawsuit, based on the allegations asserted
in the Lawsuit, as amended, and/or in the PAGA Notice, including but not limited to,
claims relating to failure to pay minimum wages, straight time compensation, overtime
compensation, double-time compensation, and interest; the calculation of the regular rate
of pay; missed/short/late/interrupted meal period, rest period, and/or recovery period
wages/premiums; failure to provide meal periods; failure to authorize and permit rest
periods and/or recovery periods; the calculation of meal period, rest period, and/or
recovery period premiums; payment for all hours worked, including off-the-clock work;

wage statements; deductions; failure to reimburse business expenses; failure to pay wages timely during employment; failure to pay all wages due upon separation; unfair business practices; penalties, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs; and alleged violations of Labor Code sections including 201; 202; 203; 204; 218.5; 218.6; 226(a); 226(e); 226(h); 226.7; 2802(b); 2802(c); 510; 512; 1174(d); 1194(a); 1194.2; 1197; 1198, 2698 *et seq.*, 2699 *et seq.*, 2800, and 2802 ("Released PAGA Claims"). Aggrieved Employees' Released PAGA Claims are limited to the PAGA Period.

(Settlement, § 5.3.)

10. No Reversion, No Claims Made: means the "Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment" and "[n]one of the Gross Settlement Amount will revert to Defendant." (Settlement, § 3.1.)

11. PAGA Allocation: The settlement includes \$60,000.00 allocated to Plaintiff's claims under PAGA, with 75% (\$45,000.00) being paid to the LWDA and 25% (\$15,000.00) being paid to the Aggrieved Employees. (Settlement, § 3.2.5.) Class Counsel submitted the proposed settlement to the LWDA before filing this Motion for Preliminary Approval. (Fattahi Decl. at ¶ 9.)

12. Net Settlement Amount: "means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments." (Settlement, § 1.27.)

13. Distribution Formula: The Individual Class Payment will be "calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks." (Settlement, § 3.2.4.) As to PAGA, "[t]he Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment." (Settlement, § 3.2.5.1.)

1 14. Tax Allocation: 20% of each Participating Class Member’s Individual Class
2 Payment will be allocated to settlement of wage claims (the “Wage Portion”). The remaining 80%
3 of each Participating Class Member’s Individual Class Payment will be allocated to settlement of
4 claims for interest and penalties (the “Non-Wage Portion”). (Settlement, § 3.2.4.1.)

5 15. Class Representative Service Payment: Defendant agrees not to oppose Plaintiff’s
6 request for a service payment to Plaintiff of up to \$10,000.00. (Settlement, § 3.2.1.) This payment
7 shall be in addition to the *pro rata* recovery received by Plaintiff as part of the Settlement.

8 16. Attorneys’ Fees and Costs: The Settlement provides that Defendant will not oppose
9 a fee application of up to one third (1/3) of the Gross Settlement Amount (currently estimated to
10 be \$366,666.67), plus out-of-pocket costs not to exceed \$40,000.00. (Settlement, § 3.2.2.)

11 17. Notice of Proposed Class Action Settlement: The Class Notice sets forth in plain
12 terms, a statement of the case, the terms of the Settlement Agreement, the approximate amount of
13 attorneys’ fees, costs, and service payment being sought, and an explanation of how the settlement
14 allocations are calculated. (Settlement, Ex. A, Class Notice.) Class Members will be notified by
15 first-class mail of the settlement. (Settlement, § 7.4.2.) Phoenix Settlement Administrators
16 (“Phoenix”), the proposed Settlement Administrator, will undertake its best efforts to ensure that
17 the class notice is provided to the current addresses of class members, including conducting a
18 national change of address search and re-mailing the class notice to updated addresses. (*Id.*; Fattahi
19 Decl. at ¶ 10, Ex. 5 [Phoenix’s Bid].)

20 **III. DISCUSSION**

21 To prevent fraud, collusion, or unfairness to the class, the settlement of a class action
22 requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This
23 Court has wide discretion to determine whether the proposed settlement is fair. (*Mallick v. Super.*
24 *Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached
25 through arm’s-length bargaining; (2) investigation is sufficient to allow counsel and the court to
26 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
27 is small. (*Dunk*, 48 Cal.App.4th at p. 1800.)

28 In considering whether a settlement is reasonable, the trial court should consider relevant

factors, which may include the strength of plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116, 128.) In order to approve a class action settlement, the court must satisfy itself that the class settlement is within the “ballpark” of reasonableness. (*Id.* at p. 133.) The record need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not require “an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims”, but instead, only an “understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.”].)

As discussed below, Class Counsel has provided information exceeding the threshold required to provide this Court with materials and information necessary to determine that the proposed settlement is fair, adequate, and reasonable.

A. The Settlement Is Fair, Reasonable, Adequate, and the Product of Investigation, Litigation, and Negotiation

1. The Settlement Is the Product of Discovery, Investigation, and Informed and Non-Collusive Arm’s-Length Negotiations

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption here that the negotiations were conducted in good faith. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 11.51.) Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The fact that a plaintiff might have received more if the case had been fully litigated is no reason not to approve the settlement.”].)

The Settlement was reached following extensive negotiations following one day of mediation with experienced class action employment mediator, Monique Ngo-Bonnici, Esq.

1 (Fattahi Decl. at ¶ 7.) The settlement negotiations were at arm’s length and, although conducted in
2 a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to
3 explore the potential for a settlement of the dispute, but each side was also prepared to litigate their
4 position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive
5 negotiations and discussions regarding the strengths and weaknesses of Plaintiff’s claims and
6 Defendant’s defenses, the Parties reached an agreement. (*Id.* at ¶ 8.)

7 Prior to reaching this settlement, Class Counsel conducted informal discovery concerning
8 the claims set forth in the litigation, such as a sampling of timekeeping and payroll records for the
9 class members, Defendant’s policy manual in effect during the class period, and information
10 regarding the total number of current and former employees in its informal discovery responses.
11 (Fattahi Decl. at ¶¶ 5-6.) In conjunction with their extensive factual investigation, Class Counsel
12 investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.* at
13 ¶ 6.) Thus, Plaintiff and Class Counsel were able to act intelligently and effectively in negotiating
14 the proposed Settlement.

15 Class Counsel also has considerable experience and has demonstrated competence with
16 litigating wage and hour class actions. (Fattahi Decl. at ¶¶ 37-48.) Again, this supports the
17 position that the terms of the Settlement are premised on objective evidence that has been
18 considered and weighed in light of the risks, expenses, and time consumption to both sides of
19 continued litigation of this action.

20 **2. The Settlement Is Fair and Reasonable in Light of the Parties’** 21 **Respective Legal Positions**

22 A settlement is not judged against what might plaintiff recover had plaintiff prevailed at
23 trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable.
24 (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 [“Compromise is inherent
25 and necessary in the settlement process . . . even if the relief afforded by the proposed settlement
26 is substantially narrower than it would be if the suits were to be successfully litigated, this is no
27 bar to a class settlement because the public interest may indeed be served by a voluntary settlement
28 in which each side gives ground in the interest of avoiding litigation.”].)

1 This settlement avoids the risks and the accompanying expense of further litigation. (Fattahi
2 Decl. at ¶ 24.) While Plaintiff is confident in the merits of his claims, a legitimate controversy
3 exists as to each cause of action. (*Id.* at ¶ 23.) Plaintiff also recognizes that proving the amount of
4 wages due to each class member would be an expensive, time-consuming, and uncertain
5 proposition. (*Id.*)

6 The proposed settlement of \$1,100,000.00 therefore represents a substantial recovery when
7 compared to Plaintiff's reasonably forecasted recovery. (Fattahi Decl. at ¶¶ 13-26.) Because of the
8 proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk
9 of an unfavorable judgment. When considering the risks of litigation, the uncertainties involved in
10 achieving class certification, the burdens of proof necessary to establish liability, the probability
11 of appeal of a favorable judgment, it is clear that the settlement amount of \$1,100,000.00 is well
12 within the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. (*Id.*)
13 *Indeed, each Settlement Class Member is eligible to receive an average net benefit of*
14 *approximately \$615.69.* (*Id.* at ¶ 25.)

15 3. Class Counsel Has Extensive Experience in Class Action Litigation

16 The settlement negotiations were conducted by highly capable and experienced counsel.
17 Class Counsel has a strong record of vigorous and effective advocacy for their clients and are
18 experienced in handling complex wage and hour class action litigation. (Fattahi Decl. at ¶¶ 37-48.)
19 Although Plaintiff and Class Counsel were prepared to litigate the claims alleged in the litigation,
20 they support the proposed Settlement as being in the best interests of the class.

21 B. The Proposed Class Notice of Settlement Should Be Approved

22 The proposed Class Notice, in the form attached to the Settlement Agreement, should be
23 approved for distribution to the class. The Class Notice informs the class of the terms of the
24 settlement and of their rights to be excluded from the settlement. And if there are class members
25 who wish to object to this proposed class action settlement, they will have the opportunity to submit
26 their objections and be heard at the Final Approval Hearing. Accordingly, the proposed Class
27 Notice meets all the requirements of Rule 3.769(f) of the California Rules of Court.
28

1 **C. The Proposed Attorneys’ Fees and Costs Are Reasonable**

2 Under the Settlement, subject to the Court’s approval, the Parties agreed to allocate
3 reasonable attorneys’ fees in an amount currently estimated to be \$366,666.67, and up to
4 \$40,000.00 in costs. (Settlement, § 3.2.2.) These amounts are disclosed to all class members in the
5 proposed Class Notice and are reasonable.

6 **1. Class Counsel Request an Award of Fees Based on the “Common Fund”**
7 **Method**

8 California courts have long awarded attorneys’ fees as a percentage of the benefit created
9 by counsel in creating a common fund. The California Supreme Court held that “when a number
10 of persons is entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs
11 for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs
12 may be awarded attorneys’ fees out of the fund.” (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34,
13 quoting *D’Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

14 Class Counsel seeks an award of attorneys’ fees on the “percentage of recovery/common
15 fund” theory. The purpose of this approach is to “spread litigation costs proportionally among all
16 the beneficiaries so that the active beneficiary does not bear the entire burden alone.” (*Vincent v.*
17 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1995)
18 15 Cal.3d 162, the California Supreme Court stated: “[O]ne who expends attorneys’ fees in
19 winning a suit which creates a fund from which others derive benefits may require those passive
20 beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in *City and*
21 *County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized
22 that the common fund doctrine has been applied “consistently in California when an action brought
23 by one party creates a fund in which other persons are entitled to share.” (*Id.* at p. 110.)

24 The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th
25 480 that, “when class action litigation establishes a monetary fund for the benefit of the class
26 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
27 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
28 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage

1 method – including relative ease of calculation, alignment of incentives between counsel and the
2 class, a better approximation of market conditions in a contingency case, and the encouragement
3 it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation –
4 convince us the percentage method is a valuable tool that should not be denied our trial courts.”
5 (*Id.* [internal citations omitted].)

6 **2. The Requested Fee Award Is in Line with Typical Cases**

7 According to a leading treatise on class actions, “[n]o general rule can be articulated on what
8 is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a
9 reasonable fee award from a common fund in order to assure that the fees do not consume a
10 disproportionate part of the recovery obtained for the class, although somewhat larger percentages
11 are not unprecedented.” (*See Conte & Newberg, Newberg on Class Actions* (3rd Ed.) § 14.03.)
12 Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with thirty
13 to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also*
14 *Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most
15 cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10 million].)

16 Here, Plaintiff requests attorneys’ fees equal one third (1/3) of the Gross Settlement
17 Amount, which is in line with the prevailing guidelines established in California case law and
18 academic literature and is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008)
19 162 Cal.App.4th 43, 66, n.11 [“Empirical studies show that, regardless whether the percentage
20 method or the lodestar method is used, fee awards in class actions average around one-third of the
21 recovery.”].) Accordingly, Plaintiff respectfully requests that the Court approve the attorneys’ fees
22 as negotiated by the Parties and requested herein.

23 **3. This Matter Involves A “Fee-Shifting” Provision of the Labor Code**

24 Labor Code § 1194 (a) provides for the recovery of “minimum wage or overtime
25 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Under this
26 section, Plaintiff would be permitted to recover his actual attorneys’ fees, even if those fees were
27 larger than the total class recovery at the conclusion of this case. This settlement is beneficial in
28 that it limits the risk of continued expenses and consumption of time, energy, and resources facing

1 Defendant while at the same time rewarding Class Counsel for their decision to assume risk by
2 taking on this matter. In fact, prosecution of this action involved significant financial risk for Class
3 Counsel. (Fattahi Decl. at ¶¶ 35-36.) Class Counsel undertook this matter solely on a contingent
4 basis, with no guarantee of recovery. (*Id.*) Once counsel undertook this litigation on behalf of the
5 Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class
6 ahead of all other concerns.

7 **4. The Experience, Reputation and Ability of Class Counsel Support the** 8 **Requested Fee Award**

9 As demonstrated by their past experience in pursuing class actions on behalf of consumers
10 and employees, Class Counsel possesses considerable expertise in litigating class actions. (Fattahi
11 Decl. at ¶¶ 37-48.) Class Counsel has been involved as lead counsel or co-counsel in several class
12 actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class
13 counsel commensurate with their skill, reputation and experience, Class Counsel’s requested fee
14 award is supported here.

15 Class Counsel’s experience in wage and hour class actions was integral in evaluating the
16 strengths and weaknesses of the case against Defendant and the reasonableness of the settlement.
17 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning
18 the rapidly evolving substantive law (state and federal), as well as the procedural law of class
19 action litigation. Based on these and other factors, Class Counsel has frequently received fee
20 awards of this percentage from the gross recovery for the class. Therefore, the requested fee award
21 is reasonable and fair.

22 **D. The PAGA Allocation is Reasonable**

23 Where settlements negotiate a good faith amount for PAGA penalties and “there is no
24 indication that this amount was the result of self-interest at the expense of other” class members,
25 such amounts are generally considered reasonable. (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr.
26 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133 at *1, 9.) Courts have approved amounts for
27 PAGA penalties in the range of zero to two percent of the total maximum amount of the Settlement.
28 (*Id.* [approving a PAGA payment of 0.3%, or \$1,500]; *see also Jack v. Hartford Fire Ins. Co.* (S.D.

Cal. Oct. 13, 2011) 2011 WL 4899942 at *6 [approving a PAGA payment of 0.25%]; *McKenzie v. Fed. Express Corp.* (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at *5 [acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement].) Here, the amount to be paid to the LWDA is larger than many other PAGA settlement amounts approved by the courts where seemingly nominal amounts were allocated for such claims. (See, e.g., *Zubia v. Shamrock Foods Co.* (C.D. Cal. Dec. 21, 2017) No. CV1603128ABAGRX, 2017 WL 10541431, at *14 [approving a PAGA settlement of 0.1%]; *Hopson*, 2008 WL 3385452, at *1 [approving a PAGA settlement of 0.3% or \$1,500]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. Oct. 31, 2012) No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *3 [approving a PAGA settlement of 0.27%].) Here, the Parties negotiated a good faith amount of \$60,000.00, 75% percent of which (\$45,000.00) will be paid to the LWDA and 25% (\$15,000.00) to be distributed to the Aggrieved Employees. (Settlement, § 3.2.5.) The Parties negotiated to allocate the portion of the Settlement to PAGA penalties in good faith and the \$60,000.00 allocation equates to approximately 5.5% of the Gross Settlement Amount, which far exceeds amounts that are routinely approved. Moreover, the \$60,000.00 allocation for PAGA penalties represents approximately 35% of the realistic maximum recovery (\$60,000.00 / \$173,170.00). (Fattahi Decl. at ¶ 22.)

E. The Service Payment to Named Plaintiff Is Reasonable

Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class, and are appropriate given the benefit the class representatives help to bring about for the class. (See *Rodriguez v. W. Publ’g Corp.* (9th Cir. 2009) 563 F.3d 948, 958-59.)

Service awards are particularly important to plaintiffs in wage and hour cases because they promote the important public policies underlying the wage and hour laws. This strong policy is codified in California Labor Code § 90.5, which provides, “it is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to

1 work under substandard unlawful conditions” Nonetheless, the California Supreme Court has
2 noted that “retaliation against employees for asserting statutory rights under the Labor Code is
3 widespread,” despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.*
4 (2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should be rewarded for
5 assuming the risk of retaliation for the sake of class members. (See *Frank v. Eastman Kodak Co.*
6 (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

7 Under the Settlement, subject to the Court’s approval, Defendant agreed to pay a Class
8 Representative Service Payment in the amount of \$10,000.00 to Plaintiff. (Settlement, § 3.2.1.)
9 Courts routinely approve a \$10,000 enhancement award for plaintiffs represented by Class
10 Counsel. (See, e.g., *Moreno v. Pretium Packaging, L.L.C.* (C.D. Cal. Aug. 6, 2021) 2021 WL
11 3673845, *3 [“The Court concludes a \$10,000 incentive award is appropriate.”]; *Suarez v. Bank of*
12 *America, National Association* (N.D. Cal., Jan. 11, 2024, No. 18-CV-01202-LB) 2024 WL 150721,
13 at *4 [“The court approves awards of \$10,000 for each class representative.”].) Class Counsel
14 represents that Plaintiff devoted a great deal of time and work assisting counsel in the case,
15 communicated with counsel very frequently for litigation and to prepare for mediation, and was
16 frequently in contact with Class Counsel during the mediation. (Fattahi Decl. at ¶¶ 27-31; see
17 generally Plaintiff’s declaration.) This amount is reasonable particularly in light of the substantial
18 benefits Plaintiff generated for all class members. (*Id.*)

19 When compared with the amounts awarded in typical class action cases, the amount
20 requested here is particularly reasonable. Indeed, a 2006 study examining the average incentive
21 award given to class action plaintiffs from 1993 to 2002 found that the “average award per class
22 representative was \$15,992 and the median award per class representative was \$4,357.” (Eisenberg
23 & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L.Rev.
24 1303, 1308.) That same study found that named plaintiffs in employment discrimination class
25 actions received an average award of \$69,850 and a median award of \$31,081, while named
26 plaintiffs in other employment class actions received an average award of \$12,121 and a median
27 award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards in
28 employment cases reflected the “courts’ wish to make representative plaintiffs whole by

1 compensating them for the high costs of their service to the class, including risks of stigmatization
2 or retaliation on the job.” (*Id.* at p. 1308.)

3 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

4 **A. Legal Standard**

5 The proposed Settlement Class is well suited for class certification. All the claims derive
6 from a core set of alleged violations of California’s wage and hour laws and regulations. For the
7 reasons set forth more fully below, for purposes of settlement only, the Class satisfies the
8 prerequisites for certification under California Code of Civil Procedure § 382. Section 382
9 provides: “when the question is one of a common or general interest, of many persons, or when
10 the parties are numerous, and it is impracticable to bring them all before the court, one or more
11 may sue or defend for the benefit of all.” (Code Civ. Proc., § 382.) There are two requirements to
12 section 382: “(1) There must be an ascertainable class; and (2) there must be a well-defined
13 community of interest in the questions of law and fact involved affecting the parties to be
14 represented.” (*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 704 [citations omitted].) To clarify
15 these requirements, the California Supreme Court has looked to Federal Rule of Civil Procedure
16 23 to explain that the community-of-interest requirement itself embodies three factors: “(1)
17 predominant questions of law or fact; (2) class representatives with claims or defenses typical of
18 the class; and (3) class representatives who can adequately represent the class.” (*Richmond v. Dart*
19 *Indus., Inc.* (1981) 29 Cal.3d 462, 470.)

20 California law and policy favor the fullest and most flexible use of the class action device.
21 (*Id.* at pp. 469-73.) Indeed, “Courts long have acknowledged the importance of class actions as a
22 means to prevent a failure of justice in our judicial system” particularly where the rights of
23 consumers are at issue. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 434.) Any doubt as to the
24 appropriateness of class treatment should be resolved in favor of certification. (*Richmond, supra*,
25 29 Cal.3d at pp. 473-75.)

26 **B. Plaintiff Maintains That the Criteria for Class Certification Are Satisfied for**

1 **Settlement Purposes.**

2 **1. The Class is Ascertainable and Numerous**

3 The proposed class that Plaintiff seeks to represent is easily ascertainable and includes
4 approximately 993 employees of Defendant.

5 Plaintiff maintains that there is an easily ascertainable class, defined by objective and
6 precise criteria. Because class members are identified using specific criteria in the regular business
7 records of Defendant, i.e., job position, the class is ascertainable. (*Wilner v. Sunset Life Ins. Co.*
8 (2000) 78 Cal.App.4th 952, 959-60 [class membership defined by ownership of product that is the
9 subject of the lawsuit is sufficient to make the class ascertainable].)

10 “The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a
11 class action suit is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981) 126
12 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’ persons, an action may
13 be maintained as a class action even where the parties are numerous and it is in fact practicable to
14 join them all.” (*Id.*) “No set number is required as a matter of law for the maintenance of a class
15 action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries of a trust
16 in an action for removal of the trustees.” (*Id.*, citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d 574; *see*
17 *also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35 member class.]) Therefore, Plaintiff
18 contends that numerosity is plainly satisfied.

19 **2. There are Many Common Issues of Law and Fact Which Predominate**

20 The Court should grant conditional class certification for settlement purposes here on the
21 grounds that questions of law and fact common to all class and subclass predominate over any
22 individual questions. This inquiry tests whether proposed classes are sufficiently cohesive to
23 warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191
24 Cal.App.3d 605.)

25 Here, the employment practices at issue are: whether Defendant had legally compliant
26 policies and practices for all hours worked, including overtime wages; whether Defendant had
27 legally compliant policies and practices to provide employees with meal periods; whether
28 Defendant had legally compliant policies and practices authorizing and permitting its employees

1 to take rest periods; whether Defendant reimbursed employees for business expenses; whether
2 Defendant consequently paid final wages timely at termination; and whether Defendant
3 consequently failed to provide accurate itemized wage statements. Plaintiff contends that the
4 factual and legal issues are the same for all the identified class members, including Plaintiff.
5 Further, all class members suffered from, and seek redress for, the same alleged injuries.

6 **3. Plaintiff's Claims Are Typical of the Claims of the Class**

7 The typicality requirement does not focus on the individual characteristics or
8 circumstances of the representative plaintiff compared to those of the remainder of the class,
9 but rather upon the typicality of the proposed representative's claims as they relate to the
10 defendant's conduct and activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["[t]he
11 only requirements are that common questions of law and fact predominate and that the class
12 representative be similarly situated" vis-à-vis the class.].) A representative plaintiff's claims
13 are typical of the class if they arise from the same event, practice or course of conduct, and if
14 the claims rest on the same legal theories. (*Id.*) That is precisely the case here. Plaintiff is a
15 former employee of Defendant. As such, he alleges that he was subject to the same policies
16 and practices as other similarly situated employees.

17 **4. Plaintiff and His Counsel Meet the Adequacy Requirement**

18 The adequacy of representation requirements is met by fulfilling two conditions: first, a
19 named plaintiff must be represented by counsel qualified to conduct the pending litigation; second,
20 a named plaintiff's interests cannot be antagonistic to those of the class. (*McGhee v. Bank of*
21 *America* (1976) 60 Cal.App.3d 442, 451.)

22 All of these requirements are met here for settlement purposes. Plaintiff retained counsel
23 with extensive experience in prosecuting complex class actions, including similar class actions that
24 previously settled. (Fattahi Decl. at ¶¶ 37-48.) Class Counsel unquestionably is "qualified,
25 experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148
26 Cal.App.3d 862, 875.) In addition, Plaintiff has no conflicts, and Plaintiff has, with counsel,
27 litigated this case and diligently reviewed the settlement terms, showing his dedication. Plaintiff's
28 willingness to serve as a representative demonstrates his serious commitment to bringing about the

1 best results possible for the class. (*McGhee, supra*, 60 Cal.App.3d at p. 451.)

2 **5. A Class Action is Superior to a Multiplicity of Litigation**

3 Finally, in making its class certification decision, the Court must determine that a class
4 action would be superior to alternative means for the fair and efficient adjudication of the litigation.
5 By consolidating many potential individual actions into a single proceeding, this Court’s use of the
6 class action device enables it to manage this litigation in a manner that serves the economics of
7 time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly
8 situated employees with small but nevertheless meritorious claims for damages would, as a
9 practical matter, have no means of redress because of the time, effort and expense required to
10 prosecute individual actions. (*Gentry, supra*, 42 Cal.4th at pp. 457-62; *Leyva v. Medline Ind.* (9th
11 Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the superiority concerns are
12 essentially non-existent.

13 **V. THE PROPOSED CLASS NOTICE IS CONSTITUTIONALLY SOUND**

14 **A. The Proposed Class Notice Plan Satisfies Due Process**

15 Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court,
16 Rule 3.766 (e), (f).) California law vests the Court with broad discretion in fashioning an
17 appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no
18 statutory or due process requirement that all class members receive actual notice, but in this matter,
19 the class members will receive direct mailed notice. As the Court of Appeals has explained, “[t]he
20 notice given should have a reasonable chance of reaching a substantial percentage of the Class
21 Members . . .” (*Id.* at p. 974.) In this case, notice of the proposed settlement will be provided by
22 direct mailing, the best possible form of notice.

23 **B. The Class Notice is Accurate and Informative**

24 The proposed Class Notice should be approved. It will be disseminated through direct U.S.
25 first class mail to the last known address for each Class Member. It informs the Class Members of
26 the terms of the Settlement and their right to be excluded from the Settlement. And if there are
27 Class Members who wish to object to this proposed class action settlement, they will have the
28 opportunity to submit their objections and be heard at the Final Approval Hearing.

1 The Class Notice also fulfills the requirement of neutrality in class notices. (Conte &
2 Newberg, *Newberg on Class Actions* (3rd Ed.) § 8.39.) It summarizes the proceedings to date
3 and the terms and conditions of the settlement agreement, in an informative and coherent
4 manner. It makes clear that the settlement agreement does not constitute an admission of liability
5 by the Defendant, who denies all liability, and it recognizes that this Court has not ruled on the
6 merits of the action. It also states that the final settlement approval decision has yet to be made.
7 The Class Notice thus complies with the standards of fairness, completeness, and neutrality
8 required of a combined settlement-certification class notice.

9 **VI. CONCLUSION**

10 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
11 approval of the proposed settlement and set a Final Approval Hearing.

12
13 Respectfully submitted,

14 Dated: January 23, 2026

WILSHIRE LAW FIRM, PLC

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