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Attorneys for Defendant
LAND FORMS LANDSCAPE
CONSTRUCTION, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

JOSE AREVALO, an individual;

Plaintiffs,

v.

LAND FORMS LANDSCAPE
CONSTRUCTION, INC., a California
corporation; JEFF TRACY, an individual; and
DOES 1 through 50, Inclusive,

Defendants.

Case No. 30-2020-01143299-CU-OE-CJC

[Hon. William Cluster, Dept. CX104]

**JOINT MOTION OF PLAINTIFF AND
DEFENDANT LAND FORMS
LANDSCAPE CONSTRUCTION, INC.'S
NOTICE OF MOTION AND MOTION
FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT (LABOR
CODE § 2698, ET SEQ.) SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

*[Filed Concurrently with Declarations of
Sandy Wallace and D. Dennis La, and
[Proposed] Judgment]*

Date: December 17, 2021

Time: 9:00 a.m.

Dept.: CX104

RESERVATION ID: 73650309



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TO THE HONORABLE COURT:

PLEASE TAKE NOTICE THAT on December 17, 2021, at 9:00 a.m., or as soon as thereafter as the matter may be heard before the Honorable William Claster in Department CX104 of the Superior Court of the State of California, County of Orange, located at 700 W Civic Center Dr, Santa Ana, CA 92701, California, plaintiff Jose Arevalo (“Plaintiff”) and defendant Land Forms Landscape Construction, Inc. (“Defendant”) will and hereby does move for entry of the following orders:

1. Granting approval, pursuant to California Labor Code section 2699(1), of the proposed settlement between plaintiff Jose Arevalo (“Plaintiff”) and Defendants Land Forms Landscape Construction, Inc. and Jeff Tracy (collectively, “Defendants”) of the claims brought pursuant to the Private Attorneys General Act of 2004 (“PAGA”) as set forth in the parties' Private Attorneys General Act (Cal. Lab. Code § 2698, *et seq.*) Settlement Agreement and Release Agreement (“Settlement Agreement”), attached as Exhibit A to the Declaration of D. Dennis La;

2. Approving the Net Settlement Amount available for payment of PAGA penalties, which is estimated to be \$61,247.25, of which seventy-five percent (75%) shall be paid to the California Labor and Workforce Development Agency (“LWDA”) and twenty-five percent (25%) shall be paid to certain employees in settlement of the Released Claims;

3. Directing Defendant to deposit the Gross Settlement Amount of \$65,000.00 within fifteen (15) calendar days after the Court grants the motion into an account for administration and distribution maintained by the Settlement Administrator, ILYM Class Action Administrators (“ILYM”). Within fourteen (14) calendar days after Defendant deposits the Gross Settlement Amount into the account, the Settlement Administrator will issue payments to Employees on a *pro rata* basis and the LWYDA; and

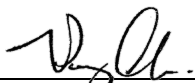
4. Directing the mailing of payments to Aggrieved Employees with a letter which is substantially similar in content and form as the Notice of PAGA Settlement and Release of Claims attached as Exhibit 1 to the [Proposed] Judgment Granting Approval of Private Attorneys General Act (Labor Code § 2698, *et seq.*) Settlement Agreement in English and Spanish.

This motion will be based upon the this notice of motion, the following Memorandum of

1 Points and Authorities, the Settlement Agreement, the Declarations of Sandy Wallace and D. Dennis
2 La, the pleadings and other records on file with the Court in this matter, and such evidence and oral
3 argument as may be presented at the hearing on this motion.

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5 CHAMI LAW, PC

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8 Dated: November 18, 2021

9 By: 
10 Pouya B. Chami, Esq.
11 Attorneys for Plaintiff,
12 Jose Arevalo

13 Dated: November 18, 2021

14 ALESHIRE & WYNDER LLP

15 By: 
16 D. Dennis La
17 Attorneys for Defendant,
18 Land Forms Landscape Construction, Inc.

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ALESHIRE &
WYNDER^{LLP}
ATTORNEYS AT LAW





MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The parties hereby respectfully submit this Motion for Approval of PAGA Settlement pursuant to the California Labor Code section 2699(1)(2) with defendant Land Forms Landscape Construction, Inc. and Jeff Tracy (collectively, “Defendants”).

Plaintiff Jose Arevalo (“Plaintiff”) seeks entry of a proposed order granting approval of the PAGA settlement, including the Court's Order: (1) finding that the PAGA settlement is fair and reasonable in light of the facts and evidence, (2) approving the form and method of settlement check administration to the alleged aggrieved employees, (3) finding that all procedural requirements for a PAGA settlement have been met, and (4) dismissing the action with prejudice as to Plaintiff and the State.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

A. Alleged Aggrieved Employees Of Complaint.

The complaint alleges that Mr. Arevalo was hired by Land Forms in 2015 as a field laborer. (Comp. ¶ 12.) “Plaintiff, and other aggrieved employees, would generally arrive at Defendants’ workshop every day at 6:00 a.m., and then be given a company truck to drive to various worksites. (Comp. ¶ 15.) “Plaintiff and other aggrieved employees would then be required to remain working at the worksite until at least 3:30 p.m., and then deliver the company truck back to Defendants’ workshop, and generally complete their shift between 5:40 p.m. and 6:00 p.m., or later.” (Comp. ¶ 16.)

Plaintiff alleges that he was “not accurately compensated for earned overtime wages” (Comp. ¶ 17) and “was also denied uninterrupted meal and rest breaks as a result of under-staffing and demands of management at various worksites.” (Comp. ¶ 22.) “At the time of his resignation, Mr. Arevalo was still owed premium pay for missed meal and rest periods, as well as unpaid wages, including overtime wages, that remain outstanding though the present and which subject Defendants to waiting time penalties.” (Comp. ¶ 30.)



B. PAGA Action And Individual Wage Claims.

On January 24, 2020, counsel for Plaintiff notified Defendants via certified mail, and the Labor and Workforce Development Agency (LWDA), of the alleged Labor Code violations in the complaint. (Declaration of Sandy Wallace (“Wallace Decl.”), ¶ 3, Exhibit 1 thereto.) The letter alleges that:

- “Mr. Arevalo, on behalf of himself and all other aggrieved employees, contends that Defendants have violated, among others, the following specific provisions of the California Labor Code, namely: 201, 202, 203, 226(a), 226.3, 226.7, 226.8, 510, 551, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1194, and 1199.”
- “Plaintiff and other aggrieved employees were generally paid for the work they performed between 6:00 a.m. and 3:30 p.m., and were generally denied payment, including accrued overtime wages, for the work done from 3:30 p.m. to 6:00 p.m., which often involved Plaintiff and other aggrieved employees being required to deliver the Defendants’ trucks back to the workshop where Plaintiff began working.”
- “Defendants knowingly denied Plaintiff and other aggrieved employees the accurate payment of their overtime wages, accurate itemized wage statements and related wage entitlements in order to reduce their business expenses, including their payroll tax liability and liability for wages to their employees.”

Following the notice to Defendant and the LWDA, and after the necessary 65-day waiting period required by Labor Code section 2699.3(2)(A), on December 18, 2017, Plaintiff filed the instant action under PAGA to recover civil penalties (“PAGA Action”).

In addition to the PAGA Action, the complaint also alleged various individual claims for unpaid wages, unpaid overtime wages, failure to pay meal and rest break premiums, wage statement penalties, waiting time penalties, and unfair competition. (“Individual Wage Claims”).

C. Defendant’s Investigation And Defenses.

After receipt of the PAGA Notice dated January 24, 2020, by February 15, 2020, Land Forms promptly conducted an internal investigation into Mr. Arevalo’s claims and held an all-hands meeting. (Wallace Decl., ¶ 4.) As stated in a letter from Land Forms to Mr. Arevalo’s counsel dated February 25, 2020:

Unpaid overtime to Mr. Tapia-Arevalo –

Allowing for all questionable days to be resolved in favor of the employee, Land Forms’ management has discerned that Mr. Tapia-Arevalo should have been paid for 201.50 overtime hours at \$25.50 per hour during fiscal year ending 12/31/2018, and for 366.25 overtime hours at \$27 per hour during fiscal year ending 12/31/2019.

Accordingly, enclosed please find two checks made payable to Mr. Tapia- Arevalo, check no. 3080 in the sum of \$3,862.23 for 2018 and check no. 3078 in the sum of \$6,623.59 for 2019; these checks are net after appropriate deductions.

Management of Land Forms requests that you extend their sincere apologies to Mr. Tapia-Arevalo for this regrettable practice that denied him this overtime pay to which he was rightly entitled.

The checks were not cashed out by Plaintiff. (Wallace Decl., ¶ 7.)

Also as stated in the letter, three other employees known to date (and no others), Ivan Hernandez-Arreola, Freddy Manzanares, and Trinidad Barajas, similarly drove company vehicles during the course of their employment. (Wallace Decl., ¶¶ 5-6.) Land Forms sent payment for overtime wages to Mr. Hernandez-Arreola and Mr. Manzanares. Mr. Hernandez-Arreola and Mr. Manzanares accepted the payment and executed declarations that they received all of their due compensation. Mr. Barajas is a non-exempt employee. (*Id.*) The letter further advised Mr. Arevalo's counsel that:

The company's policy of requiring certain workers to whom company vehicles are assigned to be fully compensated for all time spent on company business from the time that they are scheduled to and do arrive at the Santa Ana yard until they complete each day's tasks and leave the Santa Ana yard was also fully discussed with all in attendance, as was the option for other maintenance workers to travel to the various jobsites from the Santa Ana yard in company vehicles for which such travel time would not be compensated. (Wallace Decl., Exhibit 2 thereto.)

D. Mediation and Settlement.

On July 13, 2021, the parties engaged in private mediation with Anne Kotlarski of Judicate West. Following the mediation, the parties reached a settlement in principle of both Plaintiff's Individual Wage Claims and the PAGA Action. (Declaration of D. Dennis La ("La Decl."), ¶ 3.) Formal settlement agreements memorializing the terms of the settlement of the PAGA Action ("PAGA Settlement Agreement") and the Individual Wage Claims were signed by the parties as of September 1, 2021. (La Decl. ¶ 4, Exhibits A and B thereto respectively.) Further, a copy of the PAGA Settlement Agreement was provided to the LWDA on September 17, 2021. (La Decl. ¶ 5, Exhibit C thereto.)

The parties are not aware of any other actions, class or individual, whether currently



pending or in the pre-filing LWDA stage, that may be affected by the PAGA Action settlement. .

(La Decl. ¶ 3.)

This action was previously assigned to the Hon. Nancy Zeltzer, Dept. C34. On September 20, 2020, the parties submitted a Joint Stipulation to approve the settlement of the PAGA Action. (See ROA # 65.)

The basic terms of the PAGA Settlement Agreement, for which the instant motion is filed, are as follows:

- ILYM Class Action Administrators (“ILYM”) shall be designated the administer any payments under the PAGA Settlement Agreement in accordance with its terms.
- Within fifteen (15) days after approval by the Court, Defendants agree to pay a PAGA penalty award of \$65,000.00 as a settlement of contested violations of the Labor Code alleged in the complaint (“PAGA Settlement Sum”).
- The PAGA Settlement Sum is to be allocated as follows:
 - Settlement Administrator’s Fee to ILYM in the amount of \$3,752.75 for the administration of the agreement;
 - A LWDA payment to the California Labor and Workforce Development Agency in the amount of \$45,935.44 which represents seventy-five percent (75%) of the “Net Settlement Amount” (PAGA Settlement Sum minus the Settlement Administrator’s Fee);
 - A payment in the amount of \$15,311.81 to alleged aggrieved employees which represents twenty-five percent (25%) of the Net Settlement Amount, to be paid on a *pro rata* basis;
 - No portion of the PAGA Settlement Sum will be used for Plaintiff’s attorneys’ fees, costs, and/or litigation expenses;¹ and
 - No portion of the PAGA Settlement Sum will be used for an enhancement payment to Plaintiff.
- In exchange for the payment of PAGA Settlement Sum, Plaintiff agrees to fully release and forever discharge any and all claims seeking civil penalties pursuant to California Labor Code section 2698, *et seq.*, predicated on the alleged California Labor Code violations asserted in the complaint during the PAGA Period against Defendants and/or Defendants’ past or present parents, subsidiaries, and affiliated corporations, and/or Defendants’ officers, directors, employees, managers, trustees,

¹ As set forth in the settlement agreement for the Individual Wage Claims (La Decl. ¶ 4, Exhibit B thereto), Defendant agrees to pay a total of \$125,000 toward settlement. \$110,000.00 will be paid for Plaintiff’s individual wage claims, and \$15,000.00 shall be paid to Plaintiff’s counsel for the attorneys’ fees for the representative PAGA claims.

partners, agents, insurers, and/or any other individual or entity which could be liable for the acts of omissions of Defendants.

(La Decl. ¶ 6.)

E. Informal Discovery Exchange Prior To Mediation.

In preparation for the mediation, the parties engaged in informal discovery and exchanged hundreds of documents related to the claims in this action. Defendant turned over all time and payroll records for Plaintiff, and Plaintiff's personnel file. Defendant also provided a random sampling of employees' time records and payroll records. The Parties have also conducted extensive independent investigations and evaluations of the claims and defenses in this matter.

After engaging in discovery, the parties agreed for purposes of resolution that Plaintiff's employment started in July 2017 and not in 2015 as pled in the complaint.

III. ANALYSIS

A. The Proposed Settlement Should Be Approved Because It Is Fair, Reasonable, And Adequate In Light Of The Public Policy Objectives Of The PAGA.

Under the PAGA, an aggrieved employee may bring a civil action on behalf of the State to recover civil penalties for violations of the California Labor Code on behalf of themselves and other aggrieved employees. Lab. Code, § 2698, *et seq.* The PAGA "is in the nature of an enforcement action, with the aggrieved employee acting as a private attorney general to collect penalties from employers who violate labor laws." *Franco v. Athens Disposal Co., Inc.*, 171 Cal.App.4th 1277, 1300 (2009). Thus, "the employee plaintiff represents the same legal right and interest as state labor law enforcement agencies." *Arias v. Superior Court*, 46 Cal.4th 969, 980-981 (2009). The stated interest of the Division of Labor Standards Enforcement, California's labor law enforcement agency, is to "enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions [...] and to protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards." Lab. Code § 90.5(a).

Superior courts are responsible for reviewing and approving any settlement of a PAGA action. Lab. Code §§ 2699(1), (2). The court evaluates the PAGA settlement in light of the PAGA



requirement that the award not be “unjust, arbitrary and oppressive, or confiscatory.” Lab. Code §
 2699(e)(2). Although the authority in California state courts as to the proper standard of review for
 the approval of PAGA settlements is lacking, the federal district court in *O'Connor v. Uber
 Technologies, Inc.* articulated a standard based on an advisory letter from Labor and Welfare
 Development Agency (LWDA), a standard which has been adopted by other federal courts since its
 initial application. *O'Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1133-1135 (N.D.
 Cal. 2016).

In *O'Connor*, the plaintiff sought court approval of a Class Action settlement that included
 a settlement of PAGA penalties. *Id.*, at 1119-1120. To assist its review, the District Court invited
 the LWDA to submit a letter regarding the proposed settlement of PAGA penalties. *Id.*, at 1131-
 1132. The LWDA letter advised the District Court that “when a PAGA claim is settled, the relief
 provided for under the PAGA be genuine and meaningful, consistent with the underlying purpose
 of the statute to benefit the public and, in the context of a class action, the court should evaluate
 whether the settlement meets the standards of being fundamentally fair, reasonable, and adequate in
 view of PAGA's public policy goals.” *Id.*, at 1133-1135 (internal quotation omitted).²

Following *O'Connor*, other federal courts have concluded that a PAGA settlement should
 only be approved when it is “genuine and meaningful, [and] consistent with the underlying purpose
 of the statute to benefit the public.” *See Ramirez v. Benito Valley Farms, LLC*, 2017 WL 3670794,
 *8-9 (N.D. Cal. Aug. 25, 2017); *Gutilla v. Aerotek, Inc.*, 2017 WL 2729864, at *2-3 (E.D. Cal. Mar.
 22, 2017.)

² *O'Connor* also considered the factors announced in *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
 1026 (9th Cir. 1998), to evaluate a PAGA settlement. *See O'Connor, supra*, at 1134. The *Hanlon*
 factors, which are used to evaluate class action settlements, include (1) the strength of a plaintiff's
 case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of
 maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the
 extent of discovery completed; (6) the expertise and views of counsel; (7) the presence of
 government participation; and (8) the reaction of class members to the proposed settlement. *See
 Hanlon, supra*, at 1026.



Accordingly, in light of the available authority as to the appropriate standard of review for settlement of PAGA claims, the Court should adopt the reasoning of the district court in *O'Connor* and the LWDA and approve the parties' settlement of PAGA penalties based on the balancing of the relevant factors above that indicate the proposed settlement is "fundamentally fair, reasonable, and adequate in view of PAGA's public policy goals." *See also Ramirez, supra*, at *7 ("because state law enforcement agencies are the 'real parties in interest' for PAGA claims, the Court's task in reviewing the settlement is to ensure that the state's interest in enforcing the law is upheld") (citing *Sakkab v. Luxottica Retail N. Am. Inc.*, 803 F.3d 425, 435 (9th Cir. 2015)).

B. Although The Parties Dispute Whether Any Violations Have Occurred, The PAGA Settlement Achieves Compliance With, And Deters Violations Of, State Labor Laws.

The factual allegations in the complaint implicate a wide array of Labor Code provisions that were identified by Plaintiff including Labor Code section 202 (unpaid wages); section 203 (waiting time penalties); sections 510 and 1194 (unpaid overtime wages); section 226.7 (meal and rest breaks); and section 226 (failure to provide accurate wage statements), in addition to an unfair competition claim and the PAGA Action.

As described above, in connection with its efforts to "cure" any alleged violation of Labor Code as to employees similarly situated as Plaintiff, by February 15, 2020, Land Forms conducted an internal investigation and assessed Mr. Arevalo's claims. At that time, it was determined that three other employees, Mr. Hernandez-Arreola, Mr. Manzanares, and Mr. Barajas, similarly drove company vehicles during the course of their employment – as alleged in the complaint. Again, Land Forms sent payments to Mr. Hernandez-Arreola and Mr. Manzanares; Mr. Barajas is a non-exempt employee.

Therefore, while the parties dispute the extent of the alleged Labor Code laws, any claim was adequately "cured" as part of PAGA's administrative exhaustion process. That is, the litigation has undisputedly achieved compliance with the alleged Labor Code violations in the complaint, *i.e.*, with respect to payment of employees who drive to and/or from worksites as part of their employment. In addition, Defendant has agreed to pay a substantial sum in settlement of the PAGA Action to avoid further litigation and costs. Accordingly, the proposed settlement reasonably



advances PAGA’s purpose by achieving compliance with the Labor Code and deterring similar violations.

Therefore, in light of the nature of Defendants’ alleged Labor Code violations, and the good faith efforts of Defendants to cure any pled violation, Plaintiff’s settlement and release of any potential PAGA claim for \$65,000.00 without the need for further litigation is fair and reasonable.

C. The Risk, Expense, And Duration Of Further Litigation Support Approval.

Attorneys’ fees in this matter will easily cost over \$100,000.00 for each of the parties, including costs and fees for extensive discovery-written discovery and perhaps dozen depositions - and lay and expert witness preparation (which could necessarily include preparing them to testify about most, if not all, of Defendants’ past employees, all of which could result in one or more years of litigation).

The difficulties of a complex representative action litigation, the risks and uncertainty in proving violations and recovering civil penalties against Defendants, and the potential for protracted litigation and various possible delays and appeals were carefully considered by the parties in agreeing to the proposed settlement. As such, this settlement represents a reasonable compromise in light of these risks, and this factor weighs in favor of approval.

D. The Amount Offered In Settlement And Proposed Distribution Is Fair, Reasonable And Adequate.

i. The Amount Offered In Settlement.

Defendants agreed to pay a PAGA penalty award of \$65,000.00 as a settlement of the PAGA Action (“PAGA Settlement Sum”). Of the PAGA Settlement Sum, \$3,752.75 is to be paid to the administrator ILYM; \$45,935.44 (75%) is to be paid to the LWDA (“LWDA PAGA Payment”) within fifteen (15) days of the Court’s approval of the PAGA Settlement Agreement; and \$15,311.81 (25%) is to be paid to the aggrieved employees allegedly harmed as set forth in the PAGA Action within thirty (30) days of the Court’s approval of the Settlement Agreement (“Aggrieved Employee PAGA Payment”). Although only three other employees have been identified who had access to a company vehicle, Defendants agree to pay the PAGA Settlement Sum to other employees of Land



Forms Landscape Construction, Inc. during January 24, 2019 through September 1, 2021 (“PAGA Period”) to obviate further litigation fees and costs in this matter. (Wallace Decl., ¶¶ 8-9.)

ii. The Proposed Distribution.

The Aggrieved Employee PAGA Payment shall be distributed as follows:

- Within thirty (30) days of the Court's granting of this motion, Defendant will: (1) identify the alleged aggrieved employee class allegedly harmed by the violations of the Labor Code asserted in the complaint (“Identified Aggrieved Employees”); (2) confirm the number of pay periods worked by the Identified Aggrieved Employees within the PAGA Period; and (3) calculate the pro rata share due to each Identified Aggrieved Employee as applicable;
- Within thirty (30) days of the Court's granting of this motion, ILYM will distribute settlement checks to the Identified Aggrieved Employees in an amount equal to their pro rata share of the Aggrieved Employee PAGA Payment. These amounts paid to the Identified Aggrieved Employees shall be issued via an IRS Form 1099. Any settlement checks remaining un-cashed one hundred and eighty (180) or more calendar days after being issued shall be void and the balance of the PAGA Fund escheat to the State;
- In exchange for the payment of PAGA Settlement Sum, Plaintiff agrees to fully release and forever discharge any and all claims seeking civil penalties pursuant to California Labor Code section 2698, *et seq.*, predicated on the alleged California Labor Code violations asserted in the complaint during the PAGA Period against Defendants and/or Defendants' past or present parents, subsidiaries, and affiliated corporations, and/or Defendants' officers, directors, employees, managers, trustees, partners, agents, insurers, and/or any other individual or entity which could be liable for the acts of omissions of Defendants.

E. The Experience And Views Of Counsel Support Court Approval.

Counsel for Plaintiff has significant experience with wage and hour litigation, including several PAGA actions currently pending before this Court. Thus, as counsel for Plaintiff has conducted significant investigation into the law and facts, including review of hundreds of pages of employment records and data and interviews with witnesses, Plaintiff’s counsel is well-positioned to give a reasoned and intelligent assessment of the proposed settlement, which is entitled to considerable weight. *See Kullar v. Foot Locker Retail, Inc.*, 169 Cal.App.4th 116, 129 (2008).

Further, the parties reached the proposed settlement through arm’s-length negotiations through counsel, with the assistance of an experienced and respected private mediator. A settlement agreement that is “the product of extensive and hard-fought adversarial negotiations between the parties” is entitled to a presumption of fairness. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001).



F. Fairness Of Settlement In Light Of Public Policies Underlying The PAGA.

Based on the balancing of the relevant factors above, settlement of Plaintiff's PAGA Action for \$65,000.00 is fair, reasonable, and adequate. *See Nordstrom Commission Cases*, 186 Cal.App.4th 576, 589 (2010) (no abuse of discretion where court approved settlement that involved PAGA claims, but no settlement money was allocated to the PAGA claims). As there are four potential employees known through discovery to date, and as Defendant promptly changed its practices to comply with the Labor Code after receipt of the PAGA Notice, the Court should approve the proposed settlement. Plaintiff does not seek an enhancement award for the PAGA Claim.

In addition, on September 21, 2021, Plaintiff notified the LWDA of the proposed settlement. As of the date of filing of this motion, the LWDA has not objected to the terms of the settlement and, therefore, the Court may presume the government finds the terms of the settlement sufficient. *See Gutilla, supra*, at *3 (noting failure of LWDA to comment on settlement in approving settlement that allocated no funds to PAGA).

Further, the proposed PAGA settlement does not prejudice the non-party aggrieved employees because the PAGA "is fundamentally a law enforcement action designed to protect the public and not to benefit private parties." *Arias, supra*, at 933-934; *see also Bauman v. Chase Inv. Services, Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (PAGA plaintiffs recovery is "an incentive to perform a service to the state, not restitution for wrongs done to members of the class"); *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 381 (2014) (PAGA action "is fundamentally a law enforcement action designed to protect the public and not to benefit private parties"); *Villacres v. ABM Industries, Inc.*, 189 Cal.App.4th 562, 578 (2010) ("Restitution is not the primary objective of the PAGA action, as it is in most class actions").

Accordingly, as this settlement is fundamentally fair, reasonable, and adequate, and there is no prejudice to the other aggrieved employees in approving the settlement and dismissing the entire action. This PAGA settlement should be approved and the action dismissed with prejudice.

IV. CONCLUSION

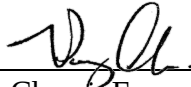
Based on the foregoing, the parties respectfully request that the Court approve the settlement of the PAGA claims as set forth herein.



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CHAMI LAW, PC

Dated: November 18, 2021

By: 
Pouya B. Chami, Esq.
Attorneys for Plaintiff,
Jose Arevalo

Dated: November 18, 2021

ALESHIRE & WYNDER LLP

By: 
D. Dennis La
Attorneys for Defendant,
Land Forms Landscape Construction, Inc.

1 **PROOF OF SERVICE**

2
3 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

4 At the time of service, I was over 18 years of age and not a party to this action. I am
5 employed in the County of Los Angeles, State of California. My business address is 2361 Rosecrans
Ave., Suite 475, El Segundo, CA 90245.

6 On November 19, 2021, I served true copies of the following document(s) described as
7 **JOINT MOTION OF PLAINTIFF AND DEFENDANT LAND FORMS LANDSCAPE**
8 **CONSTRUCTION, INC.'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF**
9 **PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698, ET SEQ.)**
10 **SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** on the
11 interested parties in this action as follows:

12 Pouya B. Chami, Esq.
13 CHAMI LAW, PC
14 11845 W. Olympic Blvd., Suite 700
15 Los Angeles, CA 90064

Attorneys for Plaintiff
JOSE AREVALO, an individual

16 Telephone: (310) 484-5001
17 Facsimile: (310) 484-5002
18 Email: *pchami@chamilaw.com*

19 Jeff Tracy
20 1901 E. Carnegie Ave., #E
21 Santa Ana, CA 92705

In Pro Per

22 Telephone: (949) 582-0877
23 Email: *j.tracy@landformslandscaping.com*

24 ☒ **BY OVERNIGHT DELIVERY:** I enclosed said document(s) in an envelope or package
25 provided by the overnight service carrier and addressed to the persons at the addresses listed in the
26 Service List. I placed the envelope or package for collection and overnight delivery at an office or
27 a regularly utilized drop box of the overnight service carrier or delivered such document(s) to a
28 courier or driver authorized by the overnight service carrier to receive documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct.

Executed on November 19, 2021, at El Segundo, California.

25 
26 DIANE BRANCHE