

SETTLEMENT AND RELEASE OF PRIVATE ATTORNEYS GENERAL ACT CLAIMS

This Settlement and Release of Private Attorneys General Act Claims (“Agreement,” “Settlement,” and “Settlement Agreement”) is made and entered into by and between Jose Arevalo (“Arevalo” or “Plaintiff”), as an individual and on behalf of Aggrieved Employees, on the one hand, and Land Forms Landscape Constructinon, Inc., (“LFLC”) and Jeff Tracy (“Tracy”) (collectively, “Defendants”) on the other hand, to resolve the Action and Covered Claims, subject to the terms and conditions hereof and the approval of the Court.

I. REPRESENTATIONS AND DEFINITIONS

1. “Aggrieved Employees” or singularly “Aggrieved Employee” mean and refer to all “field laborers, general laborers, construction workers, maintenance workers, or similarly titled employees” who worked for LFLC in California at any time from January 24, 2019 through the Effective Date of this Settlement.
2. “Counsel for LFLC” means and refers to D. Dennis La- of Aleshire & Wynder, LLP.
3. “Counsel for Tracy” mean Dina Glucksman and Sonia Taylor of Gordon Rees Scully Mansukhani, LLP.
4. “Court” means and refers to the Superior Court of California for the County of Orange.
5. “Covered Claims” means and refers to any and all known and unknown claims, losses, damages, interest, liabilities, causes of action, civil complaints, arbitration demands or suits for civil penalties under PAGA, California Labor Code Section 2698, *et seq.*, that are based upon or arise from the factual allegations in the Operative Complaint and/or Notice to the LWDA, arising during and/or with respect to period from January 24, 2019 June 20, 2017 to the Effective Date, for violation of and/or based on California Labor Code: §§ 201-204, 218, 226, 226(a), 226.3, 226.7, 226.8, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1193.5, 1193.6, 1194, 1194.2, 1194.5, 1195, 1197.1, 1199, 2802, 1102.5, Business & Professions Code Section 17200, *et. seq.*, California Government Code Section 12952, and IWC 5-2001, and all claims for attorneys’ fees and costs and statutory interest in connection therewith.
6. “Effective Date” means and refers to the date the Court has signed and entered the Approval Order and Judgment (as defined below).
7. “Lawsuit” means and refers to the civil action filed in the Superior Court of the State of California for the County of Orange, entitled *Jose Arevalo v. Land Forms Landscape Construction, Inc.*, Case No. 30-2020-01149299-CU-OE-CJC., filed on May 26, 2020.

8. “LWDA” means and refers to the California Labor and Workforce Development Agency.
9. “Operative Complaint” means and refers to: the Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq., filed on May 26, 2020, to commence the Lawsuit.
10. “PAGA” means and refers to the Private Attorneys General Act of 2004, codified at California Labor Code § 2698, *et seq.*
11. “PAGA Counsel” means and refers to Pouya Chami of Chami Law.
12. “Pay Periods” means and refers to the total number of pay periods that each Aggrieved Employee was issued a wage statement by LFLC during the period from January 24, 2019 to the Effective Date.
13. “Settlement Administrator” means and refers to Phoenix Class Action Administrators.
14. “LFLC” means and refers to Land Forms Landscape Construction. Inc.
15. “Tracy” means and refers to Jeff Tracy.
16. “Parties” means and refers to, collectively, Plaintiff, LFLC, and Tracy, “Party” means and refers to Parties individually.
17. “Releasees” means and refers to LFLC and Tracy and their respective present and former officers (including, but not limited to Sandy Wallace and Luke Alvarado), directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, re-insurers, parent companies, subsidiaries, divisions, affiliates, predecessors (including, but not limited to Jeff Tracy, Inc.), successors, assigns, and any individual or entity that could be jointly liable with LFLC and Tracy.
18. “Arevalo” or “Plaintiff” means and refers to Jose Arevalo, the named plaintiff in the Lawsuit.

II. NATURE OF ACTION

19. On January 24, 2020, Plaintiff sent a letter to the LWDA and Defendants giving notice of his intent to pursue a representative action pursuant to PAGA, on behalf of himself and the State of California, as well as on behalf of a proposed group of aggrieved employees. This letter is referred to as “Notice to the LWDA.”

20. On May 20, 2020, Plaintiff filed the Lawsuit as a representative action under PAGA on behalf of himself and Aggrieved Employees, asserting a cause of action under PAGA, alleging that Defendants failed to properly pay overtime, provide compliant meal and rest breaks or associated premium pay, timely pay wages

during employment, timely pay wages upon termination, provide compliant wage statements, and keep requisite payroll records.

21. The parties engaged in extensive investigation and exchange of data and documents, as well as a subsequent private mediation that took place on July 13, 2021 with mediator the Ann Koltarki, Esq., and after continued settlement negotiations involving the mediator and with the benefit of the mediator's evaluation, the Parties reached the Settlement described herein.

22. This Settlement relates solely to the PAGA claims asserted by Plaintiff on behalf of himself and all Aggrieved Employees. LFLC and Tracy deny any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuit, deny liability for the Covered Claims, and further deny that this Lawsuit is appropriate for representative treatment for any purpose other than settling this Lawsuit. LFLC and Tracy contend, among other things, that they have complied at all times with the California Labor Code and the related Industrial Welfare Commission Wage Orders, all other state and federal wage laws, and further contend that all of the respective employees were and are paid properly and that the Lawsuit is without merit. LFLC and Tracy have denied and continue to deny each and every material factual allegation and all alleged claims asserted against it in the Lawsuit.

23. Neither the existence of this Settlement nor anything contained in this Settlement shall be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of LFLC or Tracy. Nothing herein shall constitute an admission by LFLC or Tracy that the Lawsuit was properly brought as a representative action other than for settlement purposes. Settlement of the Lawsuit, the negotiation and execution of this Settlement, and all acts performed or documents executed pursuant to or in furtherance of this Settlement or the settlement of the Lawsuit: (a) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of either LFLC or Tracy or of the truth of any of the factual allegations in the Operative Complaint in the Lawsuit; (b) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omissions on the part of LFLC or Tracy in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal; (c) are not, shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for representative treatment, class certification or administration other than for purposes of administering this Settlement; and (d) shall not constitute or be deemed a waiver of LFLC's or Tracy's right to compel arbitration of any dispute with Aggrieved Employees that is not the subject

of the Covered Claims in the Settlement.

24. The Parties recognize that the issues presented in the Lawsuit are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay and expense disproportionate to the potential benefits of litigation. The Parties have taken into account the risk and uncertainty of the outcome inherent in any litigation.

25. Based on their own independent investigations and evaluations, the Parties and their respective counsel are of the opinion that the settlement for the consideration and on the terms set forth in this Settlement is fair, reasonable, adequate, and is in the best interests of Plaintiff, the Aggrieved Employees, LFLC and Tracy in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, PAGA Counsel believes that the settlement amount entered into is in the best interests of the Aggrieved Employees and the State of California, and is fair, reasonable, and adequate given the inherent risk of litigation.

III. TERMS OF SETTLEMENT

In consideration of the mutual covenants, promises and representations set forth in this Settlement, Plaintiff, on behalf of himself, the State of California, and all Aggrieved Employees, and LFLC and Tracy agree to settle and compromise the Lawsuit and the Covered Claims.

The Amount of Settlement.

26. As consideration for the settlement described herein and the release provided herein, LFLC agrees to pay the total amount of Sixty-Five Thousand Dollars (\$65,000.00) ("Total PAGA Settlement Amount"). The Total PAGA Settlement Amount shall be paid only for the Third Party Administrator, then 75% to the state as required by law with the remaining 25% to the aggrieved employees including Plaintiff's portion of the settlement. No portion of this Total PAGA Settlement Amount is to be allocated to attorneys' fees or Plaintiff's individual enhancement payment. No payments shall be made under either Paragraph above unless or until the Court approves the PAGA settlement.

27. LFLC has represented that there are approximately 155 individuals who are allegedly Aggrieved Employees, as defined herein, who worked approximately a combined 2,242 Pay Periods.

Allocation and Calculation of the PAGA Penalties.

28. The amount available for distribution to the LWDA and Aggrieved Employees ("PAGA Penalties") is the Total PAGA Settlement Amount less the Settlement Administration Fee to the Settlement

Administrator (“Net PAGA Penalties”). Seventy Five Percent (75%) of the Net PAGA Penalties will be paid to the LWDA (“LWDA Payment”), and Twenty Five Percent (25%) of the Net PAGA Penalties will be paid to the Aggrieved Employees (“Employee Amount”), as required by California Labor Code § 2699(i).

29. Each Aggrieved Employee will receive a *pro rata* portion of the Employee Amount to be calculated as follows: the Employee Amount will be divided by the total number of Pay Periods of all Aggrieved Employees to yield the “Pay Period Amount,” and then each Aggrieved Employee’s individual Pay Periods will be multiple by the Pay Period Amount to yield his or her “Individual PAGA Payment.” Individual PAGA Payments shall be paid to Aggrieved Employees by way of a single check to each Aggrieved Employee (“Individual Settlement Check”).

PAGA Counsel’s Attorneys’ Fees and Costs.

30. PAGA Counsel is not seeking fees or costs from the Total PAGA Settlement Amount referenced in paragraph 26.

Plaintiff’s Service Payment.

31. Plaintiff is not seeking a service payment from this Settlement. Plaintiff will only be receiving his Individual PAGA Payment that Plaintiff is entitled to under the Settlement from this Total PAGA Settlement Amount.

Tax Treatment of Individual Settlement Checks to Aggrieved Employees.

32. The Parties agree that Individual Settlement Checks sent to Aggrieved Employees will be characterized One Hundred Percent (100%) as penalties and Form 1099s will be issued. Nothing in this Settlement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Plaintiff and Aggrieved Employees shall be deemed to acknowledge that they have not obtained any tax advice from LFLC or Tracy and that neither Counsel have made any representation concerning the tax consequences, if any, of any payments made pursuant to this Agreement. To the extent that this Settlement or any its attachment is interpreted to contain or constitute advice regarding any U.S. or Federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Plaintiff and Aggrieved Employees are solely responsible for any tax obligations in connection any payments made pursuant to this Agreement.

33. Payment under the Settlement, including and not limited to payments paid to Plaintiff and Aggrieved Employees pursuant to this Settlement, are not intended to count as earnings by Plaintiff or the

Aggrieved Employees, and will not entitle Plaintiff or Aggrieved Employees to any additional compensation and/or benefits under any retirement, benefit, bonus, incentive, pension, welfare, and/or any other plan of or sponsored by LFLC or Tracy.

IV. RELEASE OF CLAIMS

34. Upon the Effective Date, Plaintiff and each Aggrieved Employee, shall fully release and forever discharge Releasees from the Covered Claims through approval of the Settlement, and the State of California shall fully release and forever discharge Releasees from the Covered Claims as they pertain to Plaintiff and Aggrieved Employees through approval of the Settlement.

35. Upon the Effective Date, Plaintiff also releases any and all claims, whether known or unknown, that could have been asserted in the Action and that in any way relate to the facts and circumstances alleged in the Action, including claims under California Labor Code sections §§ 201-204, 218, 226, 226(a), 226.3, 226.7, 226.8, 510, 512, 551, 552, 558, 1174, 1174.5, 1193.5, 1193.6, 1194, 1194.2, 1194.5, 1195, 1197.1, 1199, 2802, 1102.5, Business & Professions Code Section 17200, et. seq., California Government Code Section 12952, and IWC 5-2001, during the Covered Period.

36. Plaintiff also agrees that all of his rights under Section 1542 of the Civil Code of the State of California that are related or in any manner incidental to the matters encompassed by this Agreement are hereby waived upon approval of the PAGA Settlement by the Court. Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

V. DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

37. The Parties recognize that Court approval is required in the event of any settlement of a PAGA action, in accordance with California Labor Code § 2699(l)(2), and that a judgment with respect to PAGA action is binding with respect to non-party aggrieved employees upon Court approval, pursuant to California Labor Code § 2699(l) and *Arias v. Superior Ct.* (2009) 46 Cal.4th 969. Parties further recognize that a settlement of a PAGA action is not subject to class action procedural rules, and that Aggrieved Employees do not have the right to opt out of or otherwise exclude themselves from the Settlement, or object to the Settlement,

and upon approval of the Settlement by the Court, all Aggrieved Employees will have released the Releasees of and for the Covered Claims and Aggrieved Employees will be entitled to receive payment, in conformity with the Settlement. In order to comply with the requirements of California Labor Code § 2699, promptly upon execution of this Agreement, LFLC's counsel shall prepare and Plaintiff shall file, a Stipulation to request that the Court approve the Settlement, including and not limited to the PAGA Penalties, and Settlement Administration Fee, and apply to the Court for the entry of an order approving the Settlement and all of the requested payments and entering judgment ("Approval Order and Judgment"). On the same day that Plaintiff applies to the Court for approval of the Settlement, PAGA Counsel shall submit the Agreement to the LWDA in conformity with California Labor Code § 2699(1)(2).

38. Parties shall submit the Approval Order and Judgment in a jointly-agreed upon format, which shall seek, *inter alia*: (1) entry of judgment of the Lawsuit; (2) permanent bar of all Aggrieved Employees from prosecuting any of the Covered Claims released in this Settlement against the Releasees; and (3) that no individualized notice of entry of the Approval Order and Judgment is required to be provided to the Aggrieved Employees. Upon entry of the Approval Order and Judgment by the Court, PAGA Counsel shall submit the Approval Order and Judgment to the LWDA in conformity with California Labor Code § 2699(1)(2).

VI. DUTIES AFTER COURT APPROVAL AND ADMINISTRATION OF THE SETTLEMENT

39. Within fifteen (15) calendar days of the Effective Date, LFLC shall pay to the Settlement Administrator, an initial payment of \$65,000.

40. Within thirty (30) calendar days after the Effective Date, LFLC shall compile a list containing the following information regarding each of the Aggrieved Employees: (1) full name; (2) last known mailing address and telephone number; (3) number of Pay Periods; and (4) Social Security number ("Group List"). The Group List will be provided to the Settlement Administrator within thirty (30) calendar days after the Effective Date, and will only be used for the sole purpose of mailing notices and payments pursuant to the Settlement.

41. Within sixty (60) calendar days after LFLC funds the entire settlement, the Settlement Administrator shall pay the Court-approved LWDA Payment to the LWDA, and any Settlement Administration Fee.

42. Within sixty (60) calendar days after LFLC funds the entire of the settlement, Settlement Administrator shall mail via U.S. First Class mail to each Aggrieved Employee his or her Individual Settlement

Check at the last known address in the Group List or a more updated address from the National Change of Address Database. A cover letter (“Cover Letter”), in a mutually-agreed upon form that has been approved by the Court, in substantially the form that is attached hereto as “**Exhibit A**,” will be included in the mailing of each Aggrieved Employee’s Individual Settlement Check. Together, an Individual Settlement Check that is mailed to an Aggrieved Employee with the Cover Letter is referred to as a “Payment Packet.” For any Payment Packet that is returned to the Settlement Administrator as undeliverable within thirty (30) calendar days of the original mailing of the Payment Packet, the Settlement Administrator will undertake a skip trace search to locate an alternate, updated address, and re-mail the Payment Packet. The Settlement Administrator will only be required to re-mail the Payment Packet once by way of this process. However, if an Aggrieved Employee contacts the Settlement Administrator within thirty (30) calendar days of the original mailing of his or her Payment Packet, and it is feasible for the Settlement Administrator to cancel and re-issue the Individual Settlement Check, then upon the request of the Aggrieved Employee, the Settlement Administrator shall cancel the original Individual Settlement Check and re-issue an Individual Settlement Check along with the Cover Letter. All Individual Settlement Checks shall remain valid and negotiable up to one hundred and twenty (120) calendar days after the initial mailing of the original Payment Packets to the Aggrieved Employees, and thereafter, shall be cancelled. If any funds remain in the Settlement Administration Account as a result of cancelled Individual Settlement Checks, such funds shall be transmitted to the California State Controller’s Office Unclaimed Property Division, in the name of the Aggrieved Employees whose Individual Settlement Check is cancelled and in the respective amount of the cancelled check. All duties set forth herein shall be included in the Settlement Administration Fee and paid from the Total PAGA Settlement Amount.

43. As soon as practicable after execution of this Settlement, PAGA Counsel shall, with the assistance and cooperation of LFLC and its counsel, take all necessary steps to secure the approval of this Settlement from the Court. Irrespective of whether an Aggrieved Employee’s Individual Settlement Check has been cancelled, he or she will be deemed to be bound to this Settlement, the release provided herein, and the Court’s Approval Order and Judgment.

44. Upon complete distribution of the Total PAGA Settlement Amount by the Settlement Administrator, in accordance with the Settlement Agreement, the Settlement Administrator will notify the Parties of the distribution of the entire Total PAGA Settlement Amount, and within ten (10) business days of such notification, Plaintiff shall seek dismissal of the Action.

45. If the Court does not enter the dismissal without prejudice, or does not approve the Stipulation, LFLC's counsel shall prepare, and the Parties will execute, a second Stipulation seeking to address the Court's concerns, and Plaintiff's counsel will again file the same with the Court within five-days of the execution of the stipulation.

VII. If the Court does not approve the Total PAGA Settlement Amount in response to the second Stipulation, then Plaintiff or Defendants shall have the option of deeming both this Agreement and the Settlement Agreement related to Plaintiff's individual claims void. Written notice by any party that this Agreement and the PAGA Settlement Agreement is void, as a result of non-approval of the second Stipulation referenced in Section 44, shall be communicated, in writing, to counsel for all non-noticing parties within ten (10)-days of the Court entering an order declining to approve the second Stipulation. NO PRIOR ASSIGNMENTS

46. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

VIII. NO ADMISSION

47. Nothing contained herein nor is the consummation of this Settlement to be construed or deemed an admission with respect to liability, culpability, negligence, or wrongdoing on the part of LFLC, Tracy, Releasees, Plaintiff, PAGA Counsel, Aggrieved Employees, or the LWDA. Each of the Parties hereto has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

IX. NULLIFICATION

48. If the Court should fail to approve the Settlement as agreed upon by the Parties, the Parties shall coordinate efforts to address the Court's questions or concerns and re-apply for the Court's approval of the Settlement. If, after the Parties make a second attempt to obtain approval of the material terms of the Settlement, unless the Parties specifically agree to continue with their coordinated efforts to obtain Court approval, the Court fails to approve the material terms of this Settlement in the form agreed to by the Parties or if the Court's approval of this Settlement is reversed, modified, or declared or rendered void, then: (a) this Settlement shall be considered null and void; (b) neither this Settlement nor any of the related negotiations or proceedings shall be of any force or effect; and (c) all Parties to this Settlement shall stand in the same position,

without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Settlement shall invalidate this Settlement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

X. ATTORNEYS' FEES, COSTS AND EXPENSES

49. Except as specifically set forth herein, each Party shall bear its/his/her own attorneys' fees, costs and expenses, taxable or otherwise, incurred by him/her/it/them arising out of the Lawsuit, and shall not seek reimbursement thereof from any other party to this Agreement, unless otherwise specifically stated.

XI. CONSTRUCTION

50. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arm's-length negotiations between the Parties and that this Agreement constitutes the entire agreement between Plaintiff, LFLC and Tracy regarding the settlement of the Covered Claims and that this Agreement supersedes all prior agreements, written or oral, between or among the Parties regarding the resolution of the Covered Claims, excluding any arbitration, confidentiality, resignation, and/or severance agreement executed or to be executed by Plaintiff, LFLC and Tracy, which will remain in or be of full force and effect.

XII. CAPTIONS AND INTERPRETATIONS

51. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

XIII. MODIFICATION

52. This Settlement may not be changed, altered, waived, or modified, except in writing and signed by counsel for the Parties hereto, and approved by the Court. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

XIV. MISCELLANEOUS

53. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

54. This Settlement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all

Parties. The counterparts may be executed and/or transmitted electronically or by facsimile.

55. The Parties agree that upon approval by the Court, this Settlement shall be enforceable by the Court, and the Court shall retain exclusive and continuing equity jurisdiction pursuant to California Code of Civil Procedure § 664.6 of this action over all Parties and Aggrieved Employees to interpret and enforce the terms, conditions, and obligations set forth in this Settlement. The Parties agree that if any immaterial provision of this Settlement is determined to be invalid, the invalid portion shall be deemed severed and the remaining Settlement deemed enforceable.

**I HAVE READ THE FOREGOING PROVISIONS AND ACCEPT AND AGREE TO THEM,
AND HEREBY EXECUTE THIS AGREEMENT VOLUNTARILY WITH FULL UNDERSTANDING
OF ITS CONSEQUENCES.**

PLAINTIFF

DATED: _____

JOSE AREVALO

DEFENDANT

DATED: 8/31/21

Sandy Wallace
Land Forms Landscape Construction, Inc.

Name: Sandy Wallace

Title: CFO

On behalf of Defendant Land Forms Landscape Construction,
Inc.

DEFENDANT

DATED: _____

Jeff Tracy
JEFF TRACY

Parties. The counterparts may be executed and/or transmitted electronically or by facsimile.

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**I HAVE READ THE FOREGOING PROVISIONS AND ACCEPT AND AGREE TO THEM,
AND HEREBY EXECUTE THIS AGREEMENT VOLUNTARILY WITH FULL UNDERSTANDING
OF ITS CONSEQUENCES.**

PLAINTIFF

DATED: 9/1/21

Jose Tapia A.
JOSE AREVALO

DEFENDANT

DATED: _____

Land Forms Landscape Construction, Inc.

Name:

Title:

On behalf of Defendant Land Forms Landscape Construction,
Inc.

DEFENDANT

DATED: _____

JEFF TRACY