

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is entered into between Plaintiff Ruben Duarte ("Plaintiff" or "Class Representative") and Defendant Andre Landscape Service, Inc. ("Andre Landscape"). For purposes of this Agreement, Plaintiff and Andre Landscape are referred to as a "Party" and collectively as the "Parties."

Recitals

A. On August 14, 2020, Plaintiff filed a Complaint in the Superior Court of California, County of Los Angeles, Case No. 20STCV31056, entitled RUBIN DUARTE, an individual California resident, on behalf of himself and the proposed class, Plaintiff, v. ANDRE LANDSCAPE SERVICE, INC., a California corporation and DOES 1 THROUGH 5 inclusive, Defendants. On October 2, 2020, Plaintiff filed a First Amended Complaint ("FAC", the "Action" or the "Litigation") against Andre Landscape. The FAC alleges claims for failure to pay wages, failure to provide rest breaks, failure to provide meal periods, failure to pay overtime wages, wage statement violations, failure to pay wages of terminated or resigned employees, unfair business practices, and violation of the Private Attorneys General Act ("PAGA"). (See FAC, attached hereto as Exhibit A.) Andre Landscape denies Plaintiff's allegations and claims.

B. On August 20, 2021, the Parties participated in a mediation with mediator Michael Young of Judicate West. In preparation for the mediation, Plaintiff's counsel requested and Andre Landscape's counsel provided data and sample time and payroll data for the purported class. Additionally, Plaintiff's counsel requested and Andre Landscape's counsel provided personnel and employment documents. The Parties were unable to resolve the matter at the mediation. However, after providing additional information and documents requested and dozens of additional communications with the mediator, the Parties agreed to enter into a class action settlement to resolve all claims that were alleged or could be alleged in the FAC, subject to the approval by the Court.

C. Class Counsel has performed a thorough and comprehensive investigation of the facts relating to this Action. Among other things, Class Counsel has carefully reviewed and analyzed records received from Andre Landscape, including but not limited to Andre Landscape's policies and practices, payroll records, and time-keeping records. Class Counsel is of the opinion that the settlement documented by this Agreement is fair, reasonable, adequate and equitable, and in the best interest of Plaintiff and the purported class in light of all known facts and circumstances, including the risk of significant delay, and defenses asserted to the merits.

D. Although Andre Landscape continues to deny liability in the Action, the Parties agree that the settlement is fair, reasonable, adequate, and equitable to Plaintiff, Class Members, and Andre Landscape, and is the product of good faith and informed arms-length negotiations between the Parties consistent with public policy, and fully complies with applicable provisions of law. The term "Resolution" as used herein means this Agreement to resolve the Litigation.

E. The Parties intend this settlement to be contingent upon the Court's preliminary and final approval of each and every term of this Agreement. If the Court does not so approve this Agreement, then (1) this Agreement shall be null and void and unenforceable, (2) this Agreement may not be used or construed as evidence by or against any Party as a determination, admission, or concession of any issue of law or fact in this Action, or in any other case or proceeding for any purpose, and (3) the Parties do not waive, and instead expressly reserve, their respective rights to prosecute and defend this Action as if this Agreement never existed. However, the Parties agree that, should this Agreement not be approved by the Court, the Parties will work together to revise the Agreement in a manner that reflects the interests of the Parties and be entered as Judgment by the Court.

1 **Terms and Conditions**

2 NOW, THEREFORE, in consideration of the recitals listed above, and the promises and
warranties set forth below, the Parties agree, subject to the Court's approval as follows:

3 A. **Provisional Approval Of This Settlement**

- 4 1. Plaintiff shall submit a copy of this Agreement to the Court and shall move the
5 Court to enter an Order as to all of the following:
- 6 a. For purposes of this Agreement only, Plaintiff and Andre Landscape
7 stipulate to the certification of the following class:
 - 8 (i) "Settlement Class members" means all hourly non-
9 exempt individuals who worked for Andre Landscape
10 within the "Class Period," which is defined as August
11 14, 2016 through the date of the Court's preliminary
12 approval of this Settlement.
 - 13 (ii) "Aggrieved Employees" includes all Settlement Class
14 Members who worked for Andre Landscape within the
15 "PAGA Time Period," defined as July 22, 2019 through
16 the date of the Court's preliminary approval of this
17 Settlement.
 - 18 b. Provisionally approve all terms of this Agreement, and find that the
19 terms of this Agreement are sufficient to warrant the sending of
20 notice to the Class Members;
 - 21 c. Approve the Notice Of Proposed Settlement And Final Fairness
22 Hearing (the "Notice of Settlement") attached to this Agreement as
23 Exhibit B;
 - 24 d. Authorize the mailing of the Notice of Settlement to the Class
25 Members;
 - 26 e. Appoint and approve Jose Garay, APLC and Hamner Law Offices,
27 APLC as Class Counsel ("Class Counsel");
 - 28 f. Appoint and approve Phoenix Class Action Administration
Solutions (hereafter, the "Settlement Administrator") to administer
the Notice of Settlement and settlement payment procedures
required by this Agreement; and
 - g. Schedule a hearing, to occur within a reasonable period of time after
the opt-out deadline has expired, in which the Court shall fully and
finally approve the reasonableness of this Agreement (the "Final
Settlement Approval Hearing").
2. Andre Landscape shall not oppose Class Counsel's motion for preliminary or final
approval of the settlement so long as the motions and supporting papers are
consistent with the terms of this Agreement. Class Counsel shall provide Andre
Landscape with a reasonable opportunity to review, and provide comments to, any

1 filings, including but not limited to the motions for preliminary and final approval of
2 the settlement, before the motions and supporting papers are filed with the Court.

- 3 3. The settlement documented by this Agreement is contingent upon entry of an Order
4 by the Court that contains each of the terms specified in Section A(1) above. This
5 Agreement shall immediately become null and void in the event the Court for any
6 reason does not enter such an Order. Settlement is not contingent, however, on
7 Court approval of either the Class Representative Enhancement amount or the
8 allocation of the gross settlement amount described below as between class member
9 payments, administrative costs, attorney's fees, penalties or other amounts identified
10 in paragraph B below.

11 B. Settlement Amount

12 Andre Landscape shall pay \$319,294.28 (hereinafter, the "Settlement Amount"),
13 unless increased on a pro rata basis pursuant to Section K below, which consists of the following:
14 (i) Class Counsel's fees in an amount not to exceed one-third (1/3) of the Settlement Amount
15 which is currently approximately \$106,431.43 (ii) Class Administrator's costs of administration in
16 the amount of approximately \$12,500 ("Administration Costs"), (iii) Plaintiff's incentive award
17 not to exceed \$10,000 ("Enhancement Award"), and (iv) Class Counsel's costs not to exceed
18 \$15,000.. The Settlement Fund, less the foregoing five items, shall be referred to herein as the
19 "Net Settlement Amount" or "NSA" (approximately \$175,362.85). Andre Landscape will not
20 object to a request for Class Counsel's fees and class representative payments and other amounts
21 set forth above. In addition, Andre Landscape shall pay the employer's portion of payroll taxes on
22 settlement payments attributed as wages. Andre Landscape shall pay the Settlement Amount
23 within 60 days of final court approval of the settlement.

24 In no event shall Andre Landscape pay more than \$319,294.28 excluding Defendant's
25 share of payroll taxes arising from the payments made under this Settlement and unless increased
26 on a pro rata basis pursuant to Section K below.

27 This is not a "claims-made" settlement, and Andre Landscape will not be entitled to any
28 reversion. The Settlement Fund is non-reversionary.

The Parties agree that for purposes of this settlement, the NSA to be distributed to Class
Members shall be attributed as follows: 20% as wages, 60% as penalties, and 20% as interest.

Nothing in this agreement is intended to be, nor shall be construed as, tax advice.

The Settlement is subject to Court approval, and if approved Andre Landscape, shall fund
the settlement according to the deadlines in this Agreement.

Settlement checks will specifically indicate that they are void if not negotiated within one
hundred eighty (180) days of their issuance. Any settlement checks that remain uncashed one
hundred eighty (180) or more calendar days after issuance by the Settlement Administrator shall
be voided. The Settlement Administrator will remit the amount of each Class Member's uncashed
Settlement Payment to the California State Controller's Office: Unclaimed Property, subject to
Court approval. The Parties acknowledge that California Code of Civil Procedure section 384 and
the doctrine of *cy pres* are not applicable to this Settlement because the terms of the Settlement
Agreement expressly provide for the disposition of the entire Settlement Fund whether claimed or
unclaimed.

1. Calculation of Settlement Payments to Class Members

Any Class Member who does not opt-out of the settlement shall receive a sum of money in settlement of all released claims, as referenced in Section I.1. Class Members will be paid automatically from the Net Settlement Amount after payment of the Enhancement Award, Administration Costs, PAGA payment and payment of Class Counsel's Fees and Costs as listed in B(i) through B(v) above. The NSA is approximately \$175,362.85, which is arrived at as follows: \$319,294.28 (Settlement Fund) minus \$10,000 (Enhancement Award) minus \$12,500 (Administration Costs) minus \$83,333.34 (Class Counsel's attorney's fees) minus an amount not to exceed \$15,000 (Class Counsel's litigation costs) = \$175,362.85. If the Court approves an amount that is less than requested as set forth in this Agreement for the Enhancement Award, Administration Costs, or Class Counsel Fees and Costs, then any difference shall be included in the NSA.

Members of the Settlement Class not opting out will receive a lump sum payment as good and valuable consideration for the waiver and release of claims set forth in Section I.1., below, in an amount determined by the Settlement Administrator in accordance with the provisions of this Agreement.

The Parties agree that the NSA shall be divided between all participating Settlement Class Members in proportion to the number of individual Qualified Pay Periods for each Class Member. To calculate the minimum amount each Class Member will receive based on their individual Qualified Pay Periods, the NSA will be divided by the total number of Qualified Pay Periods by all Class Members during the Class Period and then allocated on a pro rata basis. Each Class Member's individual amount will be included in his or her Notice of Settlement. After final approval by the Court, the NSA, less any applicable withholding taxes, will be distributed to participating Settlement Class Members on a pro rata basis based on the individual Qualified Pay Periods worked during the Class Period by each participating Settlement Class Member.

There is approximately a total of 1,003 Class Members. For purposes of this settlement, a Qualified Pay Period means a company pay period during the Class Period in which the Class Member actually worked at least one day (as opposed to being on a leave or not on an assignment). All of the foregoing numbers are subject to change if the actual number of Class Members or total pay periods of the entire Class turn out to be different than those set forth above.

For those Class Members for whom pay period data is not available, the amount of their settlement payment will be based on an average of the total number of pay periods of those Class Members for whom pay period data is available, unless a Class Member can demonstrate by way of the procedure set forth in Section C below that he or she worked more than the average number of pay periods.

2. Calculation of Settlement Payments to Aggrieved Employees

Individual recoveries for PAGA penalties will be paid on a prorated basis. The total PAGA penalty allocation is \$5,000 with 75%, or \$3,750 to be paid to the California Labor and Workforce Development Agency ("LWDA"), and 25%, or \$1,250 to be distributed to Aggrieved Employees. Individual amounts will be prorated based on the individual Aggrieved Employee's work week count. To determine the individual work week value, \$1,250 will be divided by the total number of Aggrieved Employee work weeks within the PAGA Time Period. The Claims Administrator will subsequently multiple each individual Aggrieved Employee's total work week count against the individual work week value to determine the individual amount due to each Aggrieved Employee.

3. Class Representative Enhancement

Andre Landscape shall not oppose an application by Class Representative, and Class Representative shall not seek or receive an amount in excess of \$10,000 for his participation in and assistance with the Litigation. Any enhancement awarded to Class Representative by the Court shall be deducted from the Gross Settlement Amount for the purpose of determining the NSA, and shall be reported on IRS Form 1099. If the Court approves an enhancement of less than \$10,000 to Class Representative, then the unapproved portion or portions shall revert into the NSA to be distributed between the participating Settlement Class Members on a pro-rata basis.

4. Charges of the Class Administrator

Class Representative and Andre Landscape, through their respective counsel, have selected Phoenix Class Action Administration Solutions as the Settlement Administrator to administer the Resolution, which includes but is not limited to distributing and responding to inquiries about the Notice of Settlement, determining the validity of any disputes and opt-outs and calculating all amounts to be paid from the Net Settlement Fund. Charges and expenses of the Settlement Administrator, not to exceed \$12,500, will be paid from the Settlement Amount. Any charges and expenses of the Settlement Administrator greater than the allocated \$12,500 will come from the Settlement Amount. If the actual Settlement Administrator fees are less than the Parties' estimation, the difference between the actual and estimated Settlement Administrator fees will revert to the participating Settlement Class Members.

It is anticipated that the Class Administrator, through a settlement trust or otherwise, shall issue the appropriate 1099 and W-2 statements to Class Members and advise Andre Landscape of the amount to be paid in satisfaction of employer payroll tax payment obligations.

5. Taxes

The Parties agree that all employment taxes and other legally required withholdings, including but not limited to employer-funded taxes and contributions imposed on the wage portions of the Settlement Payment under the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and any similar state taxes and contributions required of employers, such as for unemployment insurance, will be withheld from payments to the members of the Settlement Class and Class Representative based on the Parties' stipulated allocation of the Net Settlement Amount as provided for in this Section. Andre Landscape shall pay the employer's share of payroll taxes separate and apart from the Settlement Amount.

The amount of federal income tax withholding will be based upon a flat withholding rate for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made pursuant to applicable state and/or local withholding codes or regulations.

For withholding tax characterization purposes and payment of taxes, the Net Settlement Amount shall be deemed and is allocated by the Parties as follows ("Net Settlement Allocation"):

- (1) 20% as wages; and
- (2) 60% as penalties
- (3) 20% as interest.

Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner to bring Andre Landscape into compliance with any such changes.

1 Finally, any and all Employer Taxes that Andre Landscape normally would be responsible
2 for paying will be paid over and above the Net Settlement Fund based on the stipulated Net
3 Settlement Allocation.

4 The amounts paid under this Agreement do not represent a modification of any previously
5 credited hours of service under any employee benefit plan, policy or bonus program sponsored by
6 Andre Landscape. Such amounts will not form the basis for additional contributions to, benefits
7 under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by
8 Andre Landscape, policies or bonus programs. Any payments made under the terms of this
9 Resolution shall not be applied retroactively, currently or on a going forward basis as salary,
10 earnings, wages, or any other form of compensation for the purposes of Andre Landscape's benefit
11 plan, policy or bonus program. Andre Landscape retains the right to modify the language of their
12 benefit plans, policies and bonus programs to effect this intent and to make clear that any amounts
13 paid pursuant to this Resolution are not for "hours worked," "hours paid," "hours of service," or
14 any similar measuring term as defined by applicable plans, policies and bonus programs for
15 purpose of eligibility, vesting, benefit accrual or any other purpose, and that additional
16 contributions or benefits are not required by this Resolution.

17 The Enhancement Award is for services to the Class and will not be treated as wages
18 subject to withholding of payroll taxes. The Class Representative agrees that he shall be solely
19 responsible for paying any and all taxes due on the Enhancement Award. Plaintiff acknowledges
20 that Andre Landscape is not undertaking to advise him or any Class Member with respect to any tax
21 consequences of this Agreement.

22 C. Notice of Settlement

- 23 1. Within 14 calendar days of the entry of an Order granting preliminary approval of
24 the terms of this Agreement and the Notice of Settlement, Andre Landscape shall
25 provide to the Class Administrator a database of the names, last known home
26 addresses, social security numbers (Class Administrator only), and number of pay
27 periods worked during the Class Period as defined by payroll records of all Class
28 Members ("Class List"). The database will be used exclusively for purposes of
facilitating the settlement. In the event that the Court does not provide preliminary
or final approval of the settlement terms, the Class Administrator will destroy the
originals and all copies of the database, and the database will not be used, directly or
indirectly, in any further litigation of the Action. Andre Landscape further agrees to
consult with the Settlement Administrator prior to the production date to ensure that
the format will be acceptable to the Settlement Administrator.
2. The Settlement Administrator shall run all the addresses provided through the
United States Postal Service NCOA database (which provides updated addresses for
any individual who has moved in the previous four years who has notified the U.S.
Postal Service of a forwarding address) to obtain current address information, and
shall mail the Notice of Settlement and Pay Period Dispute Form to the members of
the Settlement Class via first-class regular U.S. Mail using the most current mailing
address information available within fourteen (14) calendar days of the receipt of the
Class List from Andre Landscape. The Notice of Settlement shall provide the
members of the Settlement Class forty-five (45) days' notice of all applicable dates
and deadlines.
3. The Notice of Settlement will also include information regarding the nature of the
Litigation; a summary of the terms of the Settlement; the definition of the Settlement
Class; a statement that the Court has preliminarily approved the Settlement; the
procedure and time period for objecting to the Settlement, the date and location of
the Final Settlement Approval hearing; information regarding the opt-out procedure;

and Andre Landscape's calculation of the number of Qualified Pay Periods that each Settlement Class member has worked as an employee in California at any time during the Settlement Period. The Notice of Settlement shall enclose the Pay Period Dispute Form for Settlement Class members.

4. For each Settlement Class member, the Pay Period Dispute Form will identify the number of Qualified Pay Periods that she/he was employed and inform the employee of his or her right to dispute this number by completing and returning the form within forty-five (45) days of the postmark date of the Pay Period Dispute Form. A Class Member's receipt of settlement proceeds is not conditional on the submission of the Pay Period Dispute Form. Absent the receipt of a Pay Period Dispute Form, the number of pay periods identified in the Pay Period Dispute Form shall be determined to be accurate. The resolution of any disputes concerning the number of Qualified Pay Periods is discussed in Section C. It shall be presumed that each and every Class Member actually received the Notice of Settlement unless the Notice of Settlement is returned to the Class Administrator as undeliverable within 15 calendar days after mailing.
5. If a Notice of Settlement is returned from the initial notice mailing, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or mass search on LexisNexis databases based on set criteria and, if another address is identified, shall mail the Notice of Settlement to the newly identified address within five (5) days of receiving notice that a notice was undeliverable. If the Settlement Administrator is successful in locating a new address, it will re-mail the Notice of Settlement to the Settlement Class member. Class members receiving a re-mailed Notice of Settlement shall have an additional 15 days from the date of the re-mail to object or opt out. Further, any Notices returned with a forwarding address to the Settlement Administrator, as non-deliverable before the deadline date, shall be sent to the forwarding address affixed thereto. If no address can be determined by the Settlement Administrator after these efforts, no further efforts to determine an address shall be required.
6. Should any member of the Settlement Class timely submit a Pay Period Dispute Form with a deficiency, the Settlement Administrator shall, within five (5) calendar days of receipt by the Settlement Administrator of each timely submitted Pay Period Dispute Form, send a deficiency notice. The deficiency notice will provide the member of the Settlement Class no more than fourteen (14) days from the mailing of the deficiency notice to postmark a written response to cure all deficiencies. The Settlement Administrator shall contact the Parties regarding the dispute and the Parties will work in good faith to resolve it. If the Parties are unable to resolve the dispute, the Settlement Administrator will be the final arbiter of the Qualified Pay Periods for each participating Settlement Class Member during the Class Period based on the information provided to it. Any dispute not otherwise resolved by the Administrator and the Parties shall be resolved by the Court.
7. The failure of a member of the Settlement Class to timely submit a Pay Period Dispute or timely respond to a notice of deficiency shall invalidate the dispute unless all Parties' counsel agree to allow the dispute.
8. No later than twenty (20) business days prior to the Final Settlement Approval Hearing, the Settlement Administrator shall provide counsel for Andre Landscape and Class Counsel with a declaration attesting to the completion of the Notice of Settlement process, including the number of attempts to obtain valid mailing addresses for and re-sending of any returned Notices, as well as the number of valid

1 Pay Period Dispute Forms, opt-outs and deficiencies which the Settlement
2 Administrator received.

3 D. Request for Exclusion

4 In order for any Settlement Class member to validly exclude himself or herself from the
5 Settlement Class and this Resolution (i.e., to validly opt out), a written request for exclusion
6 (“Request to be Excluded”) must be signed by the Settlement Class member or his or her
7 authorized representative and must be sent to the Settlement Administrator, postmarked by no
8 later than forty-five (45) days after the date the Settlement Administrator initially mails the Notice
9 of Settlement to the Settlement Class members (or fifteen (15) days after the Settlement
10 Administrator re-mails the Notice of Settlement to the Settlement Class Member, whichever is
11 later). The Notice of Settlement shall contain instructions on how to opt out.

12 Any Settlement Class member who is also an Aggrieved Employee and submits a valid
13 request for exclusion from the class action settlement will still be bound by the PAGA settlement.
14 Said Settlement Class member/Aggrieved Employee will still receive an individual share of the
15 PAGA settlement and be deemed to have released the PAGA claims.

16 The date of the initial mailing of the Notice of Settlement, and the date the signed Request
17 to be Excluded was postmarked, shall be conclusively determined according to the records of the
18 Settlement Administrator. Any Settlement Class member who timely and validly submits a
19 Request to be Excluded from the Settlement Class and this Resolution will not be entitled to any
20 individual settlement payment, will not be bound by the terms and conditions of this Resolution,
21 and will not have any right to object, appeal, or comment thereon.

22 Any member of the Settlement Class who does not timely file and mail a Request to be
23 Excluded from the Settlement Class will be deemed included in the Settlement Class in
24 accordance with this Settlement. Class Representative waives any right to be excluded from the
25 Settlement Class.

26 The Parties and their respective counsel agree that none of them will take any steps to
27 encourage any Class Member to remain in or opt out of the Class.

28 E. Objections to Settlement

In order for any Settlement Class member to object to this Resolution, or any term of it, the
person making the objection must not submit a request for exclusion (i.e., must not opt out) and
may, postmarked by no later than forty-five (45) days after the Notice of Settlement was initially
mailed to the Settlement Class members (or fifteen (15) days after the Settlement Administrator
re-mails the Notice of Settlement to the Class member, whichever is later), serve on the Class
Administrator a written statement of the grounds of objection with the Class member’s address,
telephone number, and reference to the Action, signed by the objecting Settlement Class member
or his or her attorney, along with all supporting papers if any. The objection should clearly explain
why the Settlement Class member objects to the Resolution and state whether the Settlement Class
member (or someone on his or her behalf) intends to appear at the Final Settlement Approval
Hearing. The Settlement Class member may appear through a timely submitted written objection,
personally, or through an attorney, at his or her own expense, at the Final Settlement Approval
hearing to present his or her objection directly to the Court. Class Members may also appear
personally (or through an attorney at their own expense) at the Final Settlement Approval Hearing
and orally present their objections to the Court. Any attorney who will represent an individual
objecting to this Resolution must file a notice of appearance with the Court and serve Class
Counsel and Defense Counsel no later than forty-five (45) days after the Notice of Settlement was
initially mailed to the Settlement Class members (or fifteen (15) days after the Settlement
Administrator re-mails the Notice of Settlement to the Class member, whichever is later). If a

1 Settlement Class member objects to this Resolution, the Settlement Class member will remain a
2 member of the Settlement Class and if the Court approves this Agreement, the Settlement Class
3 member will be bound by the terms of the Resolution and Final Approval in the same way and to
4 the same extent as a Settlement Class member who does not object. The date of mailing of the
5 Notice of Settlement to the objecting Settlement Class member shall be conclusively determined
6 according to the records of the Settlement Administrator. The Court retains final authority with
7 respect to the consideration and admissibility of any Settlement Class member objections. Any
8 Settlement Class member who submits an objection may also participate in the settlement.
9 Provided that the Settlement Administrator mailed the Notice of Settlement to a member of the
10 Settlement Class as set forth in Paragraph C, this deadline to file an objection shall apply
11 notwithstanding assertion by any member of the Settlement Class of non-receipt of the Notice of
12 Settlement. The Settlement Administrator shall send any objections it receives to Andre
13 Landscape's Counsel and Class Counsel within three (3) business days of receipt.

14 Provided that the Final Approval Order is consistent with the terms and conditions of this
15 Settlement, all Class Members who do not submit timely written objections to the Settlement or
16 orally object at the Final Settlement Approval Hearing hereby waive any and all rights to appeal
17 from the Final Approval Order and Judgment, including all rights to any post-Final Approval
18 Order proceeding and appellate proceeding, such as a motion to vacate or set-aside the Final
19 Approval Order and Judgment, a motion for new trial, and any extraordinary writ, and the Final
20 Approval Order and Judgment therefore shall become final and non-appealable at the time it is
21 entered. This waiver does not include any waiver of the right to oppose any appeal, appellate
22 proceedings, or post-Final Order proceedings. A modification by the Court of the requested
23 amount of the Enhancement or Class Counsel's fees or costs shall not constitute a basis for appeal
24 of the Final Approval Order within the meaning of this paragraph.

25 Class Representative and Andre Landscape will be permitted to respond in writing to such
26 objections before the Final Settlement Approval Hearing. Class Representative waives any right to
27 object to the Resolution, and hereby endorses the Resolution as fair, reasonable and adequate and
28 in the best interests of the Settlement Class.

The Parties and their respective counsel agree that none of them will take any steps to
encourage any Class Member to object or not object to this Agreement or any term of it. Class
Members who fail to object to the Settlement in the manner specified herein shall be deemed to
have waived any objections, unless otherwise ordered by the Court.

F. Duties of the Class Administrator After the Opt-out Deadline

1. No later than 20 business days before the Final Settlement Approval Hearing, the
Class Administrator shall do the following:
 - a. Provide to Counsel for the respective parties the name of all Class
Members who did opt-out or object to the Settlement, and the
number of pay periods each Class Member worked for Andre
Landscape during the Class Period.
2. No later than 20 business days before the Final Settlement Approval Hearing, the
Class Administrator shall verify in writing to counsel for the respective Parties: (1)
the number of Class Members to whom the Notice of Settlement was mailed, (2) the
number that were undeliverable, (3) the number of Class Members who requested
exclusion (i.e., opted-out), and (4) the estimated total gross amount to be distributed
to the Class Members in the aggregate.
3. No later than 180 days following issuance of the settlement checks to Class
members, the Class Administrator will provide notice to all counsel of the amount of

checks issued that remain unpaid and will be remitted pursuant to CCP 384, to the California State Controller's Office: Unclaimed Property, subject to Court approval.

G. Final Settlement Approval Hearing

1. This Agreement will not become effective, and Andre Landscape shall have no obligation to make any payments contemplated by this Agreement, unless and until the Court conducts a Final Settlement Approval Hearing and enters Judgment, as described below, approving without material modification all of the terms of this Agreement.
2. The Court will hear from any class member who attends the final approval hearing and asks to speak regarding his or her objection, regardless of whether a written objection was submitted.
3. Class Counsel shall be responsible for ensuring that at least the following documents are filed with the Court in advance of the Final Settlement Approval Hearing so that the Court will have a sufficient basis upon which to evaluate and approve the settlement. Class Counsel shall provide Andre Landscape with a reasonable opportunity to review, and provide comments to, the motion for final approval of the settlement before the motions and supporting papers are filed with the Court:
 - a. A final report by the Class Administrator providing the information listed in Section F.2 of this Agreement;
 - b. A duly noticed motion, accompanying memorandum of points and authorities prepared by Class Counsel, and such other pleadings, evidence or other documents as may be necessary for the Court to determine that the settlement documented by this Agreement is fair, adequate and reasonable;
 - c. A Proposed Judgment for the Court's signature (i) approving each and every term of the settlement documented by this Agreement (as modified by the Court as to items remaining within its discretion relating to allocation of the Settlement Fund) as being fair, adequate and reasonable; (ii) release and waive all of the Class Members from pursuing, or seeking to reopen, claims made pursuant to the California Labor Code §§ 201, 202, 203, 226, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, and 1199 for unpaid overtime under California law, unpaid meal period premiums, unpaid rest period premiums, unpaid minimum wages, final wages not timely paid, non-compliant wage statements, and violation of California Business & Professions Code Sections 17200, *et seq.*; violation of PAGA; claims for civil penalties pursuant to the California Labor Code and any comparable claims that were or could have been asserted based on the facts alleged in the complaint and asserted in the action arising during the Class Period; and (iii) entering judgment of the entire Action. Any judgment entered by the Court will be posted on the Settlement Administrator's website for no less than 1 year following entry of judgment;
 - d. A Proposed Judgment and Notice of Entry of Judgment (collectively, "Judgment").

- 1 4. Within the Motion for Final Approval, Class Counsel shall seek approval an award
2 of attorneys' fees in an amount that shall not exceed one-third (1/3) of the gross total
3 of the Settlement Amount which is currently \$106,431.43, plus costs not to exceed
4 \$15,000. Andre Landscape shall not oppose Class Counsel's request for attorneys'
5 fees if the request does not exceed one-third (1/3) of the gross settlement amount
6 which is currently approximately \$106,431.43 plus costs not to exceed \$15,000.
7 Andre Landscape shall not oppose Class Counsel's request for a Class
8 Representative Enhancement in an amount not to exceed \$10,000. Should the Court
9 approve a lesser percentage or amount of fees and/or Litigation costs than the
10 amount that Class Counsel ultimately seeks, then the unapproved portion or portions
11 shall revert to the participating Settlement Class Members on a pro-rata basis.

12 H. Delivery of Settlement Funds to Class Administrator

- 13 1. Within 30 days after entry by the Court of the Final Order and Notice of Entry of
14 Judgment, the Class Administrator shall calculate the employer's share of payroll
15 taxes, including FICA and FUTA, on the wage portion of the settlement payments to
16 the Class. Andre Landscape shall then forward to the Class Administrator the
17 Settlement Fund, which shall not exceed \$319,294.28.00 unless increased on a pro
18 rata basis pursuant to Section K below, according to the deadlines stated in this
19 Agreement, to pay the following as approved by the Court:
- 20 a. Within ten (10) days of receipt of the Settlement Fund, the Class
21 Administrator shall issue payments to all Class Members, as
22 calculated by the Class Administrator in accordance with Section
23 B.1 above;
- 24 b. Within fourteen days (14) days of receipt of the Settlement Fund,
25 the Class Administrator shall issue the Enhancement Award set forth
26 in Section B.2 above;
- 27 c. Within fourteen (14) days of receipt of the Settlement Fund, the
28 Class Administrator shall pay the Administration Costs set forth in
29 Section B.3 above;
- 30 d. Within fourteen (14) days of receipt of the Settlement Fund, the
31 Class Administrator shall pay employer's share of the payroll taxes,
32 including FICA and FUTA, on the wage portion of the settlement
33 payments to the Class which shall be in addition to the Settlement
34 Fund;
- 35 e. Within fourteen (14) days of receipt of the Settlement Fund, the
36 Class Administrator shall pay Attorneys' fees and costs in the
37 amount awarded by the Court to Class Counsel; and
- 38 f. Within ten (10) days of receipt of the Settlement Fund, the Class
39 Administrator shall issue the PAGA Settlement Amount set forth in
40 Section B.1 above.

41 I. Releases

42 1. Release as to All Settlement Class Members.

43 Upon the Date of Final Approval, Class Representative and all members of the Settlement
44 Class, except those that make a valid and timely request to be excluded from the Class, will

1 release any and all claims and causes of action against Andre Landscape, Andre Landscape's
2 franchisors, parents, subsidiaries, affiliates, owners, employees, and their insurers, attorneys and
3 all agents thereof, including but not limited to Jeremy Andre and Joseph Andre as individuals,
4 arising out of the facts and claims asserted in the operative First Amended Complaint for wage
5 and hour violations, or any other claims or causes of action that could have reasonably been
6 asserted in the Litigation, based upon the facts alleged, including but not limited to meal and rest
7 breaks; unpaid wages, including minimum wages, regular wages, overtime under California law,
8 wage statement violations, separation pay violations, unfair business practices; and any other
9 applicable provisions of state or local law, including the applicable IWC wage order.

10
11 2. Release as to all Aggrieved Employees for Claims Under the Private
12 Attorneys General Act.

13 All Aggrieved Employees are deemed to release, on behalf of themselves and their
14 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
15 and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or
16 reasonably could have been alleged, based on the PAGA Period facts stated in the operative First
17 Amended Complaint, and the PAGA Notice letter to the California Labor Workforce
18 Development Agency ("LWDA"). Aggrieved Employees who opt-out will still receive an
19 individual share for the PAGA claims and will be deemed to have released PAGA claims.

20 3. General Release by Class Representative Only.

21 In addition to the Release as to All Settlement Class Members, Class Representative makes
22 the additional following general release of all claims, known or unknown. Class Representative
23 releases Andre Landscape, and each of its respective subsidiaries, affiliates, predecessors or
24 successors in interest, franchisors, owners, officers, directors, shareholders, employees, attorneys,
25 agents, assigns, insurers, and re-insurers of any of them, including but not limited to Jeremy Andre
26 and Joseph Andre as individuals, from all claims, demands, rights, liabilities and causes of action
27 of every nature and description whatsoever, known or unknown, asserted or that might have been
28 asserted, whether in tort, contract, or for violation of any state or federal statute, rule or regulation
arising out of, relating to, or in connection with any act or omission by or on the part of any
releasee referenced above. (The release set forth in this paragraph shall be referred to hereinafter
as the "General Release.")

With respect to the General Release, Class Representative stipulates and agrees that, upon
the Date of Final Approval, Class Representative shall be deemed to have expressly waived and
relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section
1542 of the California Civil Code, or any other similar provision under federal or state law, which
provides:

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.

Accordingly, if the facts relating in any manner to this Resolution are found hereafter to be
other than or different from the facts now believed to be true, the release of claims contained
herein shall be effective as to all unknown claims.

1 J. Miscellaneous Provisions

2 1. Stay of Litigation

3 Class Representative and Andre Landscape agree to the stay of all discovery in the
4 Litigation, pending Final Approval of the Resolution by the Court.

5 2. Interpretation of the Agreement

6 This Agreement constitutes the entire agreement between Class Representative and Andre
7 Landscape. Except as expressly provided herein, this Agreement has not been executed in reliance
8 upon any other written or oral representations or terms, and no such extrinsic oral or written
9 representations or terms shall modify, vary or contradict its terms. In entering into this Agreement,
10 the Parties agree that this Agreement is to be construed according to its terms and may not be
11 varied or contradicted by extrinsic evidence. The Agreement will be interpreted and enforced
12 under the laws of the State of California, both in its procedural and substantive aspects, without
13 regard to its conflict of laws provisions. Any claim arising out of or relating to the Agreement, or
14 the subject matter hereof, will be resolved solely and exclusively in the Superior Court of the State
15 of California for the County of Los Angeles, and Class Representative and Andre Landscape
16 hereby consent to the personal jurisdiction of the Judge over them solely in connection therewith.
17 Class Representative, on his own behalf and on behalf of the Settlement Class, and Andre
18 Landscape participated in the negotiation and drafting of this Agreement and had available to them
19 the advice and assistance of independent counsel. As such, neither Class Representative nor Andre
20 Landscape may claim that any ambiguity in this Agreement should be construed against the other.

21 The terms and conditions of this Agreement constitute the exclusive and final
22 understanding and expression of all agreements between Class Representative and Andre
23 Landscape with respect to the Resolution of the Litigation. The Agreement may be modified only
24 by a writing signed by the original signatories expressly stating an intent to modify the Agreement
25 and approved by the Court.

26 3. Further Cooperation

27 Class Representative and Andre Landscape and their respective attorneys shall proceed
28 diligently to prepare and execute all documents, to seek the necessary approvals from the Court,
and to do all things reasonably necessary or convenient to consummate the Agreement as
expeditiously as possible.

4. Confidentiality of Documents

After the expiration of any appeals period, Class Representative, the Settlement
Administrator, and Class Counsel shall maintain the confidentiality of all documents and other
information obtained in the lawsuit, unless necessary for appeal or such documents are ordered to
be disclosed by the Judge or by a subpoena.

5. Counterparts

The Agreement may be executed in one or more actual or non-original counterparts, all of
which will be considered one and the same instrument and all of which will be considered
duplicate originals.

6. Authority

Each individual signing below warrants that he or she has the authority to execute this Agreement on behalf of the party for whom or which that individual signs.

7. No Third-Party Beneficiaries

Class Representative, members of the Settlement Class, and Andre Landscape are direct beneficiaries of this Agreement, but there are no third party beneficiaries.

8. Force Majeure

The failure of any party to perform any of its obligations hereunder shall not subject such party to any liability or remedy for damages, or otherwise, where such failure is occasioned in whole or in part by acts of God, fires, accidents, earthquakes, other natural disasters, explosions, floods, wars, interruptions or delays in transportation, power outages, labor disputes or shortages, shortages of material or supplies, governmental laws, restrictions, rules or regulations, sabotage, terrorist acts, acts or failures to act of any third parties, or any other similar or different circumstances or causes beyond the reasonable control of such party.

9. Deadlines Falling on Weekends or Holidays

To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following court day.

10. Severability

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defense Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

K. Escalator Clause

It was estimated for purposes of settlement that there were approximately 1,003 Class Members during the Class Period. The Parties agree that if the actual number of Class Members through the end of the Class Period exceeds 1,003 by more than 10% (i.e., more than 101 Class Members) as of the end of the Class Period, there will be a pro rata adjustment to the Gross Settlement Amount equal to \$249.26 per additional Class Member.

THE UNDERSIGNED ACKNOWLEDGE THAT EACH HAS READ THE FOREGOING AGREEMENT AND ACCEPTS AND AGREES TO THE PROVISIONS CONTAINED THEREIN, AND HEREBY EXECUTES IT VOLUNTARILY WITH FULL KNOWLEDGE OF ITS CONSEQUENCES.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates indicated below.

IT IS SO AGREED:

Dated: _____, 2023

Ruben Duarte

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: _____, 2022

Andre Landscape Service, Inc.

By: _____

Title: _____

Date: _____, 2023

GARAY LAW, APLC

JOSE GARAY, Co-counsel for
Plaintiff

Date: _____, 2023

HAMNER LAW OFFICES, APC

CHRISTOPHER HAMNER, Co-
counsel for Plaintiff

Date: _____, 2023

THE BARRITT FIRM

DOUGLAS BARRIT, counsel
for Defendant