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10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

12 RUBIN DUARTE, an individual
13 California resident, on behalf of himself
and the proposed class

14 Plaintiff

15 v.

16 ANDRE LANDSCAPE SERVICE, INC.,
17 a California corporation and DOES 1
THROUGH 5 inclusive,

18 Defendants.
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Case No. 20STCV31056

Assigned for All Purposes to:
Hon. Maren Nelson, Dept. 17

**DECLARATION OF JOSE R. GARAY IN
SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

[Filed concurrently with Notice of Motion,
Memorandum, [Proposed] Order]

Date: May 31, 2023
Time: 9:00 a.m.
Dept.: 17

Action Filed: August 14, 2020
Trial Date: None set

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1 exchange information and negotiate with the assistance of the mediator. Defendant produced data
2 for 177 employees (78 current, 99 former). Approximately 290 employees worked for Defendant
3 from July 7, 2019 until October 11, 2021. That represents a 61% sampling. 844 aggrieved
4 employees worked at least one pay period during the PAGA period: July 22, 2019 to mid-May
5 2020). Typically, Plaintiff's Counsel in similar lawsuits relies on a 10 to 25% sampling. Samplings
6 above 50% tend to only confirm the results of a 10 to 25%—in the instant matter, Plaintiff obtained
7 more than double the typical sampling percentage . I have litigated Class Actions since 2001 and
8 typically samplings of 10 to 25% in wage and hour matters has been found to establish a
9 representative sampling when the violations and practices and policies contributing to violations is
10 uniform. In the instant matter, time-keeping was tracked using a mobile application, all class
11 members worked the same schedule (6:30 a.m. to 3 p.m.), meal periods were scheduled from 11
12 a.m. to 11:30 a.m. and Defendants routinely required employees to complete work even after the
13 scheduled shifts were completed. Thus, employees who were required to complete jobs typically
14 worked an extra 15 to 25 minutes. Employees duties and tasks were uniform: 1) they worked as
15 laborers in commercial maintenance, landscaping, tree removal, tree trimming and other uniform
16 duties relating to landscaping, 2) foreman, supervisors, and leads engaged in the same or similar
17 duties as their subordinates, and 3) the majority of the workforce engaged in laborer duties such as
18 mowing lawns, trimming, etc. The data provided to our data analyst was consistent with what
19 Defendant and Plaintiff described. As such my associate, Mr. Chris Hamner and I concluded the
20 data sampling was adequate.

21 7. On September 9, 2021, Plaintiff propounded his first set of special interrogatories
22 and requests for production of documents seeking, *inter alia*, class member contact information,
23 evidence of Defendant's class-wide policies and practices, time records, and payroll records. The
24 following day, Defendant propounded its first set of special interrogatories and requests for
25 production of documents on Plaintiff.

26 8. The Parties exchanged discovery responses and further met and conferred.
27 Thereafter, with the assistance of the mediator, the Parties agreed to settle the class and PAGA
28 claims in this action and spent the next few months drafting, negotiating, and finalizing a long-form

1 settlement agreement, which is the subject of the instant motion. The settlement was reached
2 through arm's length negotiations with the help of a respected mediator that is experienced in wage
3 and hour class actions. Though cordial and professional, the settlement negotiations have been, at
4 all times, adversarial, non-collusive in nature, conducted at arm's length, and tempered by the
5 efforts of both sides to serve the interests of their clients. Given that there are approximately
6 1,281 (increased from 1,003 based on the escalator clause) Class Members, Plaintiff estimates
7 the average recovery per Class Member will increase from \$125.05 to \$159.78 from the Net
8 Settlement Amount, assuming full participation.

9 9. **Issues causing delay in filing:** Mediation was held on or about August 20, 2021.
10 Notice of Settlement was filed on or about November 30, 2021. The Motion for Preliminary
11 Hearing was filed February 15, 2023. On May 30, 2023 the Court continued the hearing date to
12 August 3, 2023 and requested supplemental information. On July 12, 2023, the Parties filed a
13 Joint Stipulation and requested a 30-day extension as a result of a life-threatening medical
14 condition suffered by my mother-in-law who is also my assistant's grandmother. Mr. Hyun who
15 at all times assisted with all facets of the motion work, traveled to South Korea as a result of to
16 multiple losses in his family and severe illness—several of which were related to Covid.
17 Unfortunately, these unforeseeable events transpired throughout the period of time when
18 collectively were preparing the Motion for Preliminary Approval. While the Motion for
19 Preliminary Approval is unopposed, Defense Counsel actively participates in reviewing and
20 editing. Issues which caused delays:

- 21 a. Settlement was not obtained until November 9, 2021. The Parties continued to
22 dispute and negotiate until the mediator's proposal was finally accepted. In
23 fact, the dispute over data almost caused negotiations to fall apart. The mediator,
24 Mike Young, was critical to maintaining the mediation equilibrium during this
25 period of time.
- 26 b. Plaintiff's Counsel and Defense Counsel argued over the production of critical
27 information, such as employee counts, currents, formers, etc. In fact Plaintiff's
28 Counsel threatened, but did not have to file, ex parte motions to produce third

1 party records. Plaintiff's Counsel did formally demand contact information and
2 employee counts post mediation—something that should have been produced in
3 mediation but was not. In fact, both Parties in October 2021 filed discovery and
4 objections and engaged in dozens of emails sometimes daily advocating their
5 respective positions. In short, extraordinary effort on behalf of all Counsel was
6 dedicated to ensuring that both Parties accepted the Mediator's Proposal.

7 c. Defense Counsel and Plaintiff's Counsel at all times worked cooperatively but
8 both actively participated and disputed the content, arguments, and other
9 relevant information relating to the Settlement Agreement and the Motion.

10 d. Daniel Hyun was faced with numerous illnesses ranging from Covid and
11 deaths within his family.

12 e. Covid Omicron affected me and my staff personally starting on or about
13 February 2022 after it emerged in late 2021. I also was infected at the initial
14 outbreak in 2020 and the symptoms were severe and my recovery was long.

15 f. Plaintiff's Counsel was diligent in immediately notifying the Court of the need
16 for extensions as these issues arose and regularly communicated with Defense
17 Counsel as tragedies and illnesses struck and impacted our collective ability to
18 complete the necessary work.

19 g. While the instant motion is unopposed, Defense Counsel and Defendant
20 actively participating in all facets of the editing, commenting, reviewing etc.
21 Defense Counsel and Plaintiff's Counsel at all times worked cooperatively.
22 Plaintiff's Counsel, except for the Settlement Agreement, could have filed the
23 motion unilaterally without Defense Counsel's active participation. Instead,
24 we decided to work with Defense Counsel and avoid elongated disputes similar
25 to what occurred pre-mediation and post-mediation. As an example, the initial
26 draft settlement agreement was shared on December 10, 2021 and not agreed
27 to by the Parties until late May, 2022. While Defense Counsel and Defendant
28 did not cause any undue delay, nevertheless given the other factors affecting

1 Plaintiff's Counsel ability to timely respond and follow up, it was very difficult
2 to coordinate in a more timely manner.

3 h. As stated above the tragedies and illnesses, in particular, Covid and Covid
4 related deaths severely impacted our ability to complete the motion in a more
5 timely matter. In particular, the time period from May 2022 until early
6 December 2022 was replete with unforeseeable events referenced herein.

7 i. My Co-Counsel, Chris Hamner, at all times was standing by to take the lead in
8 finalizing the motion and related documents. However, because Mr. Hyun and
9 I were very engaged in the issues we communicated to him that despite the
10 unfortunate events we could complete the motion in a timelier manner.
11 However, we were wrong. As an example, my Co-Counsel, Mr. Hamner, on
12 or about August 2022 asked me to take the lead and I informed him that Mr.
13 Hyun and I would complete the final motion draft no later than mid September
14 2022. However, due to illness and the referenced events affecting both Mr.
15 Hyun and I, we did not present Defense Counsel with a final draft until
16 December 28, 2023.

17 j. Class Members and Aggrieved Employees are not prejudiced. Defendant
18 insisted that additional employees be included in the class size without an
19 escalator clause up to the date of Preliminary Approval. Plaintiff's Counsel
20 rejected the term and negotiated for a substantial escalator which increases the
21 Gross Recovery by \$249.26 per additional Class Member or Aggrieved
22 Employee. The class member and aggrieved employee size has increased by
23 278 from 1003 to 1,281. Therefore, the Gross Recovery has increased by
24 \$69,294.28 from \$250,000 to \$319,294.2—that is an increase of 27.77%. Most
25 class action and PAGA settlements, in Plaintiff's Counsel experience, do not
26 increase the Gross Recovery by the escalator clause which was aggressively
27 negotiated and recommended by the Mediator.

28 **CONDITIONAL CLASS CERTIFICATION**

1 10. In this case, the proposed Class consists of all current and former non-exempt
2 employees who are and/or were employed by Defendant in California at any time from August 14,
3 2016 through the date of preliminary approval.

4 11. Defendant's records show the class consists of approximately 1,003 individuals,
5 making joinder of all Class Members impracticable. Further, the Class is readily ascertainable
6 from Defendant's business records because all Class Members are current or former employees
7 of Defendant.

8 12. Here, Plaintiff alleged that Defendant maintained uniform employment practices
9 that illegally deprived Class Members of wages, meal periods, and rest periods, resulting in
10 derivative violations.

11 13. Plaintiff's allegations present common legal and factual questions of, *inter alia*,
12 whether Defendant applied the same wage compensation, and meal period and rest break policies
13 to all Class Members; whether those policies or their implementation resulted in Labor Code
14 violations; whether Defendant's conduct was intentional; and whether Class Members are entitled
15 to penalties. These questions could be resolved using Defendant's time and payroll records,
16 corporate representative testimony, and written policies and practices.

17 14. Plaintiff alleges that he and the other Class Members were employed by the same
18 company and injured by the company's common policies and practices related to compensation
19 including, meal periods and rest breaks, and derivative violations. Plaintiff seeks relief for these
20 claims and derivative claims on behalf of all Class Members.

21 15. In the present case, Plaintiff's interests are coextensive with the interests of the
22 Class. Plaintiff has already demonstrated his ability to advocate for the interests of the Class by
23 initiating this litigation, gathering documents and information, and obtaining a fair settlement on
24 behalf of Class Members. Plaintiff started working for Defendant in 2012. He started as a laborer
25 (primarily mowing lawns, trimming, cleaning, etc.) He was promoted to a working foreman in
26 2015 and engaged in the same duties plus landscaping duties (i.e., tree removal, planting, etc.).
27 He oversaw a work crew of about 3 to 5 employees. As a foreman, he reported to a supervisor
28 who in turn oversaw crews comprised of the same or similar crews depending on the size of

1 the commercial client. Defendant ONLY performs commercial maintenance and landscaping.
2 Thus, each and every crew was a mirror image. Each crew was required to report time through
3 an application, subject to the same rest and meal period requirements (11:00 a.m. to 11:30 a.m.),
4 and in practice suffered the same or similar violations of the Labor Code. Thus, Plaintiff's claims
5 are both typical and similarly situated to Class Members (approximate 1003 at the time of
6 mediation, both current and formers from the 4 years prior to the filing of the Complaint; and,
7 844 Aggrieved Employees 844 during the 1 year prior to the filing of PAGA notice "PAGA
8 liability period").

9 16. Here, none of the other 1,003 Class Members have shown any interest in bearing
10 the expense and burden of litigating their own claims.

11 **REASONABLENESS OF THE SETTLEMENT**

12 17. Plaintiff's Counsel thoroughly investigated the proposed Class Members' claims,
13 applicable law, and potential defenses. Both firms prosecute wage and hour class actions on
14 behalf of employees and serve as plaintiffs' counsel of record in numerous wage and hour class
15 action cases pending in state and/or federal court. The attorneys working on this case have been
16 appointed class counsel in many cases and have extensive experience.

17 18. While Plaintiff and his Counsel believed and continue to believe this is a strong
18 case for certification, the significant risks and expenses associated with class certification and
19 liability proceedings must be taken into account. In determining whether the amount offered at
20 mediation was reasonable, Plaintiff's Counsel weighed that figure against many risk factors,
21 including:

- 22 • Plaintiff, Class Members, and Aggrieved Employees signed an arbitration
23 agreement that would have required employees to pursue claims in individual
24 arbitration and dismiss the class action and PAGA claims in this case without
25 prejudice, to the detriment of absent Class Members. Defendant produced a sample
26 arbitration agreement confirming that in fact an arbitration agreement was in place
27 for all employees at the time the lawsuit was filed;
- 28 • The great discretion afforded to trial courts in electing to grant or deny class

1 certification, meaning it is entirely possible that this Court would deny certification
2 of the proposed Class, resulting in no recovery whatsoever for the unnamed Class
3 Members;

- 4 • Defendant's likely argument that common issues do not predominate, based on the
5 variation in Class Members' job duties;
- 6 • Defendant's likely arguments that Plaintiff's claims are not typical of those of the
7 Class and that Plaintiff is not an adequate class representative;
- 8 • The relative lack of written evidence for non-piece-rate Class Members' missed rest
9 periods, other than their declarations;
- 10 • Even if the Court certified the class, the possibility that it would find that Defendant
11 satisfied its duty to make breaks available. *See Brinker*, 53 Cal.4th 1004;
- 12 • Defendant's likely argument that, even if found liable for unpaid wages including
13 minimum and overtime compensation, and meal and rest period violations, the Class
14 lacked sufficient evidence to legally establish their damages;
- 15 • Defendant's likely argument that Plaintiff's estimate of the maximum damages
16 available to the Class is vastly overstated and does not comport with the *actual*
17 damages suffered by Class Members;
- 18 • Challenges based on the holding in *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.
19 App. 5th 1308 (2018) with respect to derivative wage statement penalties;
- 20 • Defendant's curing of the alleged violations after the filing of this class action;
- 21 • The possibility that, as in any litigation, the Class could proceed all the way to trial
22 and be victorious in this case and still find themselves unable to actually enforce
23 their ultimate judgment owing to Defendant's ultimate insolvency or other
24 unforeseen intervening circumstances; and
- 25 • Defendant continues to deny that it engaged in any misconduct in connection with
26 its wage-and-hour practices, and further denies that it has any liability or engaged in
27 wrongdoing of any kind associated with the litigation. Defendant contends, among
28 other things, that it complies, and has complied at all times, with both federal and

1 state wage and hour laws, and all other laws regulating the employer-employee
2 relationship at issue in this litigation.

3 19. Here, Plaintiff contends that his claims are based on Defendant's common, class-
4 wide policies and procedures, and that liability could be determined on a class-wide basis without
5 depending on individual assessments of liability. Plaintiff's Counsel and their expert calculated
6 Defendant's total potential exposure assuming Plaintiff prevailed on all aspects of his claims at
7 trial, but weighed that value against the chance of succeeding at class certification and trial.

8 20. Plaintiff's strongest claim was the meal period claim which was potentially worth
9 about \$889,300.00, assuming a 100% unique meal period violation rate based on Defendant's
10 time punch records that indicated that Defendant rounded short meal periods to 30 minutes,
11 thereby creating a certifiable issue and a presumption that a meal period violation occurred.
12 However, Defendant's records showed that meal periods that were longer than 30 minutes were
13 rounded down to 30 minutes, thereby providing the employee with extra compensation and
14 overcoming the presumption for certain rounded meal periods. Further, evidence demonstrating
15 that meal periods were actually short, interrupted, and/or restricted to the worksite would be based
16 on anecdotal evidence that was subject to individualized inquiries and could be challenged by
17 Defendant's competing declarations stating that Class Members voluntarily chose to work
18 through their meal periods and/or remain at the worksite, among other things. In addition,
19 Defendant asserted and produced in mediation verifications that current and former employees
20 signed questionnaires as part of their payroll and time-keeping records which verified they
21 received all of their meal breaks. Defendant produced 13,719 verifications to which employees
22 respond "Yes" to the question, "DID YOU TAKE ALL YOUR MEALS AND BREAKS?" Thus,
23 Plaintiff discounted the claim by about 75% to \$222,325.00, to account for the arbitration
24 agreement affecting all employees, Class Members' signed verifications authenticating their meal
25 breaks, and alleged violations that would require individualized inquiries. Had the matter
26 proceeded to certification or a PAGA trial the likelihood that Plaintiff would have prevailed
27 would be less than 25% in light of the overwhelming evidence supporting Defendant's defense.

28 21. Plaintiff's unpaid wage claim for Defendant's unlawful rounding and failure to

1 pay for off-the-clock work was worth an estimated \$444,650.00, assuming a 100% violation rate.
2 Specifically, Defendant regularly paid Class Members for exactly eight (8) hours of work for day
3 and required authorization to work overtime. However, Defendant's records indicate that time
4 was also rounded in the Class Members' favor. Also, the only potential evidence in support of
5 the off-the-clock work would consist of purely anecdotal evidence from Class Members whose
6 work experience and work demands varied greatly depending on their job titles, departments, and
7 supervisors, which would make it difficult to certify these claims. In addition, Plaintiff anticipated
8 that through class certification, Defendant would provide declarations from Class Members
9 supporting their position that Class Members were paid properly. Accordingly, Plaintiff
10 discounted the claim by 75% to \$111,162.50, which represents a reduction for the arbitration
11 agreement, numerous individualized issues, and rounding that benefitted Class Members.

12 22. The rest break claim was potentially worth about \$889,300.00, assuming a 100%
13 violation rate for missed, interrupted, short, and/or restricted rest break. However, the rest break
14 claim would have mainly relied on Class Member testimony, making it a riskier claim at class
15 certification and liability stages. Defendant likely would have argued that only a small number
16 of Class Members actually missed their rest breaks. Certification likely would have required
17 depositions of Class Members who provided declarations, and Defendant surely would have
18 obtained opposing declarations stating either rest breaks were taken or rest breaks were
19 voluntarily waived. In addition, Class Members signed questionnaires stating that they received
20 all of their rest breaks. Accordingly, the rest break claim was discounted by 75% to \$222,325.00
21 to account for the arbitration agreement which all class members/aggrieved employees signed,
22 risk of competing declarations, and Class Members' signed verifications authenticating their rest
23 breaks.

24 23. The derivative claims depended completely upon proving liability for the underlying
25 claims, and also presented their own unique risks. Thus, although the Class arguably could have
26 seen a payout of nearly \$368,992.80 for waiting time penalties and \$871,600.00 for wage statement
27 penalties if Plaintiff prevailed on every penalty claim, Plaintiff would not recover any derivative
28 penalties if he failed to prove the underlying claims. As such, the claims were reduced by 75% to

1 \$92,248.20 for waiting time penalties and \$217,900.00 for wage statement penalties, based on the
2 underlying violation rates and probability of success of the wage and reimbursement claims.

3 24. The PAGA claim presented even higher hurdles. Although Plaintiff's Counsel
4 found Defendant's exposure could potentially reach approximately \$2,555,550.00 at the initial
5 penalty rates without stacking penalties, Class Members would only be entitled to 25% or
6 \$638,887.50 of the PAGA award. The fundamental issue affecting the potential and viability of
7 the PAGA claim was whether the alleged violations were intentional. In mediation, the parties
8 agreed based on the strong recommendation of the PAGA penalties did not meet the legal
9 requirement. Furthermore, to allot anything more than a modest amount to the LWDA would
10 prejudice the Class Members because it would be unjust for them to have to give the LWDA 75%

11 25. Here, the reasonable estimated damages and penalties for all claims total
12 approximately \$1,402,626.20, if Plaintiff were to prevail on the merits for **all** of the alleged claims.
13 Since Plaintiff signed an arbitration agreement that would likely result in a dismissal of this class
14 and PAGA action, reaching a compromise at this stage for \$319,294.28 (approximately 22.74%
15 of the reasonable estimated damages) is well within the range of reasonableness, and will allow
16 Class Members to obtain compensation for their claims without having to file and litigate their
17 own cases in arbitration, and receive a larger recovery than a pure PAGA action.

18 26. Considering the arbitration agreement signed by Plaintiff, the fact that most if not
19 all Class Members signed an arbitration agreement, the uncertainty and risks inherent in this type
20 of litigation, and the delay in Class recovery (should this matter proceed beyond the mediation),
21 Plaintiff and his Counsel agree that the proposed settlement is fair, adequate, and reasonable, based
22 on our experience litigating these types of cases, as well as other types of class actions and complex
23 litigation. In addition, the proposed settlement ensures that *all* potential Class Members will recover
24 from the settlement fund instead of having to individually bring their claims in arbitration. In light
25 of all these considerations, Plaintiff agreed to the proposed settlement.

26 **REASONABLENESS OF THE ENHANCEMENT PAYMENT TO CLASS**

27 **REPRESENTATIVE**

28 27. Here, Plaintiff assisted Counsel in gathering the evidence necessary to prosecute

1 the class claims, maintained regular contact with Counsel, identified potential witnesses, attended
2 multiple telephonic meetings with Plaintiff's Counsel, was available by telephone for mediation
3 and answered questions, reviewed the Settlement to make sure it was fair to the Class, and
4 otherwise actively participated in the prosecution of the Class claims. No action would likely
5 have been taken by Class Members individually, and no compensation would have been
6 recovered for them, but for Plaintiff's services on behalf of the Class.

7 28. The proposed enhancement payment of \$10,000 to the Class Representative is
8 intended to recognize the Class Representative's substantial initiative and significant efforts on
9 behalf of the Class. The Class Representative worked with Plaintiff's Counsel and produced
10 substantial information relevant to the Action. More specifically, the Class Representative searched
11 his files and produced all of the documents and records he had relating to his employment with
12 Defendant. The Class Representative reviewed these documents with Plaintiff's Counsel and
13 explained the allegedly unfair business practices he encountered. Furthermore, he took a substantial
14 risk by agreeing to serve as Class Representative with all of the attendant duties, and by agreeing
15 to put the interests of the Class ahead of his own, including the considerable monetary risk he
16 undertook on behalf of Class Members to be personally liable for all costs incurred regardless of
17 the success of the litigation or class certification and potential disclosure to future employers that
18 he sued a former employer, making his future uncertain. As a result of his efforts, the Class
19 Members will receive significant financial recoveries.

20 **REASONABLENESS OF ATTORNEYS' FEES AWARD AND**
21 **QUALIFICATIONS OF COUNSEL**

22 29. Class Counsel are experienced in wage and hour matters and class action litigation,
23 and I am currently serving as plaintiff's counsel in dozens of other wage and hour class action cases
24 in both state and federal court.

25 30. I submit the following facts in support of my qualifications.

26 31. I graduated from Stanford University in May 1989. I obtained my J.D. from
27 Southern Methodist University in May 1998. I was admitted to the California State Bar in February
28 1999. In or around 2001, I focused my practice primarily on employment wage and hour class

1 litigation. Since the inception of my law firm, I have represented individuals in all wage related
2 matters. I successfully represented individuals in DLSE filings and civil court. As a result, I
3 transitioned into class actions with a broad and in-depth experience affecting class based lawsuits.
4 In 2002, I filed one of the first known class action cases under Labor Code section 226.7. My law
5 firm was instrumental in the statewide dispute over the private right of action debate, as well as the
6 debate over wage versus penalty. I successfully litigated both issues in state and federal court. In
7 2004, as a result of my extensive experience, California Rural Legal Assistance selected my law
8 firm to assist them with class litigation affecting migrant workers. I have been asked to sit on class
9 action panels on numerous occasions, have been asked to act as a mediator, law professors have
10 requested that I speak on class action issues, ethics issues and damage analyses, and have written
11 numerous articles tailored to high-tech employees.

12 32. Since the time my law firm transitioned primarily into wage and hour class actions,
13 numerous attorneys that have filed wage and hour class actions have sought the assistance of my
14 law firm either as co-counsel or of-counsel. Over the course of almost a decade, I have prosecuted
15 hundreds of wage and hour class actions, including many with the same issues presented in the
16 instant related matters.

17 33. During the last two decades, I have litigated hundreds of class actions involving the
18 same or similar issues. The following is a small sample of cases that were certified and in which I
19 was appointed class counsel (either as lead counsel or co-counsel) in state and federal court:

- 20 • *Graham v. DST Output West, LLC, et al.*, Case No. PC 2008 0109 (Wage and Hour Class
21 Action);
- 22 • *Canale v. Auto Nation, et al.*, Case No. BC323890 (Joint Employer Wage And Hour Class
23 Action);
- 24 • *Sarkisian v. Symantec Corporation, et al.*, Case No. BC423476 (Wage and Hour Class
25 Action);
- 26 • *Shepherd v. Ayres Group, et al.* and *Garcia v. Ayres Group, et al.*, Case Nos. 30-2010-
27 00372924 and 30-2010-00404619, respectively (Class action alleging that defendant failed
28 to provide meal periods and rest breaks under California law);

- 1 • *Nava v. Chapman Care, et al.*, Case No. 30-2010-00413245 (Class Action alleging that
- 2 defendant failed to provide meal periods and rest breaks under California law);
- 3 • *Vazquez v. Marriott International, Inc., et al.* Case No. 30-2010-00396748-CU-OE-CXC
- 4 (Class action alleging that defendant failed to provide meal periods and rest breaks under
- 5 California law);
- 6 • *Sandoval, et al. v. Advanced Dynamic Solutions, Inc.*, Case No. 30-2010-00395127-CU-
- 7 OE-CXC (Class action alleging that defendant failure to provide meal periods, rest periods
- 8 and overtime);
- 9 • *O'Flynn v. Golfsmith*, Case No. 30-2009-00180164-CU-OE-CXC (Class action alleging
- 10 that defendant failed to provide meal periods, rest periods and overtime compensation);
- 11 • *Espinoza v. Big Lots Stores, Inc., et al.*, Case No. CIV236538 [Class action alleging that
- 12 defendant failed to provide rest breaks under California law);
- 13 • *Eralta, et al. v. B&V Enterprises*, Case No. 30-2010-00405905-CUOE-CXC (Class action
- 14 alleging failure to pay wages for off the clock time, and meal and rest period violations);
- 15 • *Perez v. El Torito Restaurants, Inc., et al.*, Case No. NC036649 (Class action alleging that
- 16 defendant failure to provide meal periods, rest periods and overtime compensation);
- 17 • *Culbertson v. Ikea, et al.*, Case No. RG07348854 (Class action alleging that defendant failed
- 18 to provide meal periods and rest breaks under California law);
- 19 • *Corbin v. Landry's Restaurants, et al.*, Case No. BC380713 (Class action alleging that
- 20 defendant failed to provide meal periods, rest periods and overtime compensation);
- 21 • *Abraham Vega v. Domino's Pizza California, et al.*, Case No. 03CC00203 (Class action
- 22 alleging that defendant failed to provide meal periods and rest breaks under California law);
- 23 • *Mercado v. Gate Gourmet, Inc., et al.*, Case No. CV-07-02305-JHN(CWx) (Wage and hour
- 24 class action, settlement of two subclasses alleging failure to provide lawful meal and rest
- 25 periods);
- 26 • *Dellmore v. Toys R' Us*, Case No. RG07306616 (Class action alleging failed to pay wages
- 27 for off the clock time, meal and rest period violations);
- 28 • *Mendoza v. Panda Express*, Case No. BC371019 (Class action alleging defendant failed to

- 1 provide meal periods or compensation);
- 2 • *Galavis v. Patina Group*, Case No. BC3755225 (Class action alleging defendant failed to
- 3 provide meal periods or compensation);
- 4 • *Gidino v. McGrath Rent Corp., et al.*, Case No. VG09446874 (Class action alleging that
- 5 defendant failed to provide meal periods and rest breaks under California law);
- 6 • *Gomez, et al. v. Adriana's Insurance Services, Inc., et al.*, Case No. CIVRS806612 (Class
- 7 action alleging that defendant failed to provide meal periods and rest breaks under
- 8 California law);
- 9 • *Johanson v. Home Loan Center*, Case No. 07CC01405 (Class action alleging that defendant
- 10 failed to provide meal periods, rest periods and overtime);
- 11 • *O'Flynn v. Worldwide Golf Enterprises, Inc., et al.*, Case No. 07CC01393 (Class action
- 12 alleging that defendant failed to provide meal periods, rest periods and overtime);
- 13 • *Aravena v. VMware, Inc. et al.*, Case No. 07CC01368 (Misclassification class action for
- 14 software engineers);
- 15 • *Roberts v. Palm, Inc., et al.*, Case No. 1-10-CV-161497 (Misclassification of test engineers
- 16 alleging that defendant misclassified test engineers as exempt);
- 17 • *Aravena v. Cisco Systems, et al.*, Case No. 07CC01367 (Misclassification class action for
- 18 software engineers);
- 19 • *Chan v. Paypal, Inc.*, Case No. 1-10-CV-168947 (Misclassification class action for software
- 20 engineers and related positions in multiple job families alleging that defendant misclassified
- 21 software engineers as exempt);
- 22 • *Vu v. Ebay, Inc.*, Case No. 1-10-CV-167040 (Misclassification class action for software
- 23 engineers and related positions in multiple job families alleging that defendant misclassified
- 24 software engineers as exempt);
- 25 • *Thomas v. Cognizant Technology Solutions*, Case No. CV 11-1123 JST (Misclassification
- 26 of high-tech employees);
- 27 • *Lopez v. Ware Disposal, Inc.*, Case No. 30-2010-00405307-CU-OWCXC (Meal and rest
- 28 period class action];

- 1 • *Barajas v. Best Brands Corp.*, Case No. CIVDS1014454 (Wage and hour class action);
- 2 • *Ortega, et al. v. CR&R Waste Services*, Case No. BC414624 (Meal and rest period class
- 3 action); and
- 4 • *Medina v. IDS USA West, Inc.*, Case No. CIVRS1111028 (Wage and hour class action).

5 34. Daniel J. Hyun performed work on this matter as a contract attorney. Mr. Hyun
6 was admitted to the California Bar in May of 2016. He received his J.D. from Washington
7 University in St. Louis, School of Law and her B.A. from the University of California San Diego.
8 Prior to working on this matter, Mr. Hyun worked at Aegis Law Firm where he focused primarily
9 on Plaintiff's-side class action employment litigation, and currently litigates dozens of class
10 actions. Mr. Hyun has been appointed class counsel in numerous class actions and has substantial
11 experience litigating class and PAGA actions.

12 35. Plaintiff's Counsel has expended considerable time and effort on this case and will
13 continue to do so through final approval.

14 36. In the present case, Plaintiff will seek Court approval of the requested attorneys'
15 fees award of up to one-third of the Gross Settlement Amount (currently equal to \$106,431.43),
16 and up to \$15,000 in reimbursement of litigation costs. At final approval, Plaintiff's Counsel will
17 fully brief the merits of their request for the award of attorneys' fees and litigation costs.

18 **EXHIBITS**

19 37. A true and correct copy of the Class Action and PAGA Settlement is attached hereto
20 as **Exhibit A**.

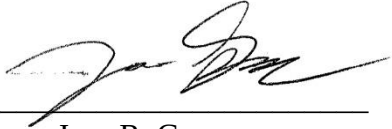
21 38. A true and correct copy of the settlement administration bid from Phoenix Class
22 Action Administration Solutions is attached hereto as **Exhibit B**.

23 39. A true and correct copy of the e-mail confirmation of submission of the proposed
24 settlement agreement to the Labor and Workforce Development Agency is attached hereto as
25 **Exhibit C**.

26 40. A true and correct copy of the LWDA Notice Letter is attached hereto as **Exhibit**
27 **D**.

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

3 Executed on October 12, 2023 in Coto De Caza, California.

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6 Jose R. Garay
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Exhibit A

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

THIS IS AN IMPORTANT COURT APPROVED NOTICE. READ CAREFULLY.

Duarte v. Andre Landscape Service, Inc.
Los Angeles County Superior Court
Case No. 20STCV31056

If you worked as a non-exempt hourly employee for Andre Landscape, Inc. (“Defendant”) in California at any time from August 14, 2016 through [INSERT PRELIMINARY APPROVAL DATE], you are eligible to receive compensation from a class action settlement.

- You have been identified as a Class Member (defined below) in a Lawsuit (defined below) brought by a former employee of Defendant. Defendant denies all allegations and contends it has complied with California law at all relevant times. However, to avoid the continuing expense of litigation, the Parties have reached a settlement of highly disputed claims (the “Settlement”). The Court has preliminarily approved the Settlement, finding it to be fair, reasonable, adequate, and in the best interests of the Class Members.
- The Settlement will affect all of Defendant’s non-exempt hourly California employees from August 14, 2016 through [INSERT PRELIMINARY APPROVAL DATE] (the “Class Period”).
- If the Court grants final approval of the Settlement, you will receive a settlement payment.

*A court authorized this notice. This is not an advertisement.
You are not being sued. Your rights will be affected by this notice and settlement.*

YOUR LEGAL RIGHTS AND OPTIONS	
<u>PARTICIPATE IN THE SETTLEMENT – NO ACTION REQUIRED</u>	Stay in this Lawsuit. Receive a payment. Give up certain rights. By doing nothing, you become part of the Settlement Class (defined below), will receive a settlement payment, and will give up certain rights to sue Defendant separately about the legal claims raised in this Lawsuit.
<u>OBJECT TO THE SETTLEMENT – ACTION REQUIRED</u>	Stay in this Lawsuit. May give up certain rights. If you object to the Settlement, you will remain a member of the Class (defined below), and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object.
<u>ASK TO BE EXCLUDED – ACTION REQUIRED</u>	Opt out of the Settlement. Receive no payment from the settlement for the Class claims, but receive an individual settlement share for civil penalties under the California Private Attorneys General Act of 2004 (“PAGA”). Keep rights to individually pursue only the Class claims. If you opt out of the Settlement, you won’t receive any share of the Class payment, but you retain the right to sue Defendant separately about the Class claims in this Lawsuit. However, even if you opt out, you will still receive an individual settlement share for claims for civil penalties pursuant to

	PAGA and will be deemed to have released the PAGA claims.
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- To object to the Settlement or to ask to be excluded, you must act before [DATE], 2023.
- **Any questions?** Read on or contact Class Counsel (defined below) or the Settlement Administrator (defined below).

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION	PAGE 3-5
1. Why did I get this notice?	
2. What is the Lawsuit about?	
3. What is a class action and who is involved?	
4. Why is this Lawsuit a class action?	
5. What are the terms of the proposed Settlement?	
WHO IS IN THE CLASS	PAGE 5
6. Am I part of this Class?	
7. I'm still not sure if I am included.	
YOUR RIGHTS AND OPTIONS	PAGE 5-7
8. What is my approximate Individual Settlement Payment?	
9. What rights am I releasing if I participate in the Settlement?	
10. How do I object to the Settlement?	
11. Why would I ask to be excluded?	
12. How do I ask to be excluded from the Class?	
THE LAWYERS REPRESENTING YOU	PAGE 7
13. Do I have a lawyer in this case?	
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THE SETTLEMENT, APPROVAL, AND PAYMENT PROCESS	PAGE 7-8
15. Who is handling the settlement administration process?	
16. When is the Final Approval Hearing and do I have to attend?	
17. When will I get money after the hearing?	
GETTING MORE INFORMATION.....	PAGE 8-9
18. Are more details available?	

BASIC INFORMATION

1. Why did I get this notice?

Records show that you are a potential member of the Class because you worked for Defendant in California as a non-exempt hourly employee during the Class Period. The Court has given preliminary approval to the Settlement of a class action lawsuit that may affect your legal rights and ordered that this Notice be sent to you to explain your rights in connection with the Settlement. The Court has determined only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate, and reasonable; the Court has not made any ruling on the merits of Plaintiff's claims or Defendant's defenses.

The lawsuit is known as *Duarte v. Andre Landscape Service, Inc.*, Case No. 20STCV31056 (the "Lawsuit"). You can view the Lawsuit's records online by visiting the Court's website (<https://www.lacourt.org/casesummary/ui/>), entering the Case Number in the search box, and selecting "Search."

2. What is this Lawsuit about?

The Lawsuit is about whether Defendant failed to pay all wages including overtime, failed to provide proper meal and rest breaks, failed to provide accurate itemized wage statements, and failed to timely pay all wages due upon separation of employment to its non-exempt hourly employees as required by applicable California laws. Based on these alleged violations, the Lawsuit also alleges violations of California's Labor Code and Unfair Competition Law ("UCL") and seeks civil penalties for these alleged violations under PAGA.

Defendant denies any liability or wrongdoing associated with the claims alleged in the Lawsuit.

3. What is a class action and who is involved?

In an employment class action lawsuit such as this, a person called the "Class Representative" sues his or her former employer on behalf of other current or former employees who may have similar claims. The people who may have similar claims are called "Class Members," and Class Members are collectively referred to as "the Class." The Class Representative is also called the Plaintiff. There is one Plaintiff/Class Representative in this Action, Rubin Duarte. The company that was sued (in this case Andre Landscape, Inc.) is called the Defendant. In class action litigation, one Court resolves the issues for everyone in the Class in one lawsuit, except for those people who choose to exclude themselves from the Class.

4. Why is this Lawsuit a class action?

As part of the Settlement, Plaintiff and Defendant agreed to conditionally certify the Lawsuit as a class action for all of Plaintiff's alleged claims for settlement purposes only and to ask the Court to approve the Settlement.

By agreeing to the terms of the settlement, Defendant does not admit any of the allegations in this Action, that it has done anything wrong or that any Class Member has suffered any damage. Defendant settled this case to avoid additional expense, inconvenience, and interference with its business operations. The Court has not ruled on the merits of Plaintiff's claims or the defenses of Defendant. Defendant retains

the right to defend itself against any of the allegations involved in the Lawsuit if for any reason the Settlement is not approved by the Court.

5. What are the terms of the proposed Settlement?

The major terms of the Settlement are as follows:

1. Defendant has agreed to pay \$319,294.28. This \$319,294.28 total settlement figure is known as the “Gross Settlement Amount,” unless increased on a pro rata basis according to the terms of the Settlement Agreement.
2. Plaintiff Rubin Duarte has agreed to a general release of all of his claims against Defendant.
3. Plaintiff seeks the following allocation of the Gross Settlement Amount:
 - a. Up to one-third (1/3) of the Gross Settlement Amount (or currently approximately \$106,431.43) for Class Counsel’s attorneys’ fees;
 - b. Up to \$15,000 for reimbursement of Class Counsel’s litigation costs;
 - c. An enhancement payment of up to \$10,000 for Plaintiff Rubin Duarte for dedicating personal time and performing work in connection with the Lawsuit, assisting Class Counsel in investigating the alleged claims, being available to answer Class Counsel’s questions, providing a general release of claims, and undertaking the risks of filing the Lawsuit;
 - d. All costs of the Settlement Administrator, which are currently estimated to be no more than \$12,500; and
 - e. \$5,000 as PAGA civil penalties. Per Labor Code Section 2699(i), seventy-five percent (75%) of this amount (\$3,750) will be payable to the California Labor and Workforce Development Agency (“LWDA”). The remaining twenty-five percent (25%), or \$1,250, will be payable to the Class as the “PAGA Amount.” Only those Settlement Class members who worked the time period of August 14, 2019 through the date of Preliminary Approval (“Aggrieved Employees”) will share in the recovery of \$1,250.00.
4. After the above deductions from the Gross Settlement Amount, the remaining funds will be distributed to Class Members who do not opt out of the Settlement on a pro rata basis. To ensure timely payment, please contact and inform the Settlement Administrator listed in Section 18, below, of any changes to your mailing address.

If the Court approves this proposed allocation, the Parties estimate that \$175,362.85 (the “Net Settlement Amount”) will be distributed to Class Members who do not request to be excluded (the “Participating Class Members”) according to the following formula:

The Net Settlement Amount 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.

Your estimated Individual Settlement Payment is listed in Section 8 of this Notice. Employee-side payroll deductions will be made to your Individual Settlement Payment for state and federal withholding taxes and any other applicable payroll deductions owed by you as a result of the payment, with 20% allocated to wages, 60% allocated to penalties and interest, and 20% allocated to expense reimbursements. Defendant will pay employer-side taxes separate and apart from the Gross Settlement Amount.

Nothing in this Notice or the Settlement is intended to be tax advice. You should consult your tax advisor for any tax issues pertaining to this Settlement.

WHO IS IN THE CLASS?

6. Am I part of this Class?

The "Settlement Class" consists of all persons who worked as non-exempt hourly employees in California for Defendant at any time from August 14, 2016 through [INSERT PRELIMINARY APPROVAL DATE].

7. I'm still not sure if I am included.

If you still are not sure whether you are included in the Class, you can get free help by contacting Phoenix Class Action Administration Solutions, the "Settlement Administrator," at the designated phone number for this matter at [insert telephone number], or by calling or writing the lawyers representing the Class in this case ("Class Counsel"), at (949) 208-3400.

YOUR RIGHTS AND OPTIONS

You have to decide whether to stay in the Class, object to the Settlement, or ask to be excluded from the Settlement. These options are further explained below, including the dates by which you need to take any action.

8. What is my approximate Individual Settlement Payment?

According to payroll records maintained by Defendant, your total number of Qualified Pay Periods during the Class Period is [REDACTED]. As a result, your estimated Individual Settlement Payment will be \$ [REDACTED].

You do not need to do anything further to receive your Individual Settlement Payment, other than to ensure that the Settlement Administrator has an accurate mailing address for you. It is important that

you contact and inform the Settlement Administrator listed in Section 18, below, of any changes to your mailing address for timely payment.

If you believe your total number of Qualified Pay Periods (shown above) is not accurate, you may complete and submit the enclosed Pay Period Dispute Form to the Settlement Administrator, indicating what you believe is the correct number of Qualified Pay Periods. Please be advised that your number of Qualified Pay Periods is presumed to be correct, unless you submit documents to support your contention to the Settlement Administrator no later than [DATE], 2023.

9. What rights am I releasing if I participate in the Settlement?

If the Court grants final approval of the Settlement, each Class Member who does not validly opt-out will be mailed an Individual Settlement Payment. In addition, each Class Member who does not validly opt-out, will release any and all claims and causes of action against Andre Landscape, Andre Landscape's franchisors, parents, subsidiaries, affiliates, owners, employees, and their insurers, attorneys and all agents thereof, including but not limited to Jeremy Andre and Joseph Andre as individuals, arising out of the facts and claims asserted in the operative First Amended Complaint for wage and hour violations, or any other claims or causes of action that could have reasonably been asserted in the Litigation, based upon the facts alleged, including but not limited to meal and rest breaks; unpaid wages, including minimum wages, regular wages, overtime under California law, wage statement violations, separation pay violations, unfair business practices; and any other applicable provisions of state or local law, including the applicable IWC wage order..

For members of the Class who do not validly opt out, the release period shall run from August 14, 2016 through [INSERT PRELIMINARY APPROVAL DATE] for non-exempt hourly employees.

The proposed Settlement includes the settlement of claims for civil penalties under PAGA. An employee may not request exclusion from the settlement of a PAGA claim. All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the operative First Amended Complaint, and the PAGA Notice letter to the California Labor Workforce Development Agency ("LWDA"). Aggrieved Employees who opt-out will still receive an individual share for the PAGA claims and will be deemed to have released PAGA claims.

10. How do I object to the Settlement?

If you are a Class Member and would like to object to the Settlement, you must not submit a request to be excluded (*i.e.*, must not opt out).

If you submit both a request to be excluded and an objection, you will be excluded from the Settlement (see sections 11 and 12 below), and your objection will not be considered.

To object in writing, mail a written objection to the Settlement Administrator (at the address in Section 18, below) setting forth the grounds of objection, along with any supporting documents postmarked no later than [DATE], 2023, which is 45 days from the date that this Notice was mailed. All written objections must be signed and must contain your address, telephone number, and a reference to the

Lawsuit. However, 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.

You may also appear personally or through an attorney, at your own expense, at the Final Approval Hearing to present your objection directly to the Court. If you object, but the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as a Class Member who does not object.

11. Why would I ask to be excluded?

You have the right to exclude yourself from the Settlement. If you exclude yourself from the Class — sometimes called “opting-out” of the Class — you will only receive an individual settlement share for the PAGA claims and will not receive any compensation from the Settlement for the Class claims. If you exclude yourself, you will not be legally bound by the Court’s disposition of the Class claims, but you will still be deemed to have released the PAGA claims.

12. How do I ask to be excluded from the Class?

If you are a member of the Class described above and would like to exclude yourself from the Class, you need to submit a written request for exclusion (“Request to be Excluded”) must be signed by the Settlement Class member or his or her authorized representative and must be sent to the Settlement Administrator at the address below in Section 18, and it must be postmarked on or before [DATE], 2023. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a Request to be Excluded has been timely submitted. Any Class Member who requests to be excluded from the Class will only receive an individual settlement share for the PAGA claims, will release only his or her PAGA claims, will not receive any compensation from the Settlement for the Class claims, and will not have any right to object, appeal, or comment thereon. Class Members who fail to submit a valid and timely Request to be Excluded on or before [DATE], 2023, will be bound by all terms of the Settlement and any final disposition entered in this Class Action if the Court approves the Settlement.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court preliminarily decided that Jose Garay, APLC and Hamner Law Offices, APLC are qualified to represent you and all Class Members in this Lawsuit. These law firms are also called “Class Counsel” in the context of this case.

14. How will the lawyers be paid?

As part of the Settlement with Defendant, Class Counsel has requested one-third of the Gross Settlement Amount (currently, that is equal to approximately \$106,431.43) in attorneys’ fees, plus costs not to exceed \$15,000 to be paid from the Gross Settlement Amount to compensate Class Counsel for their work on this matter. You will not have to pay Class Counsel’s fees and costs from your Individual Settlement Payment.

THE SETTLEMENT, APPROVAL, AND PAYMENT PROCESS

15. Who is handling the Settlement Administration process?

The Settlement Administrator, Phoenix Class Action Administration Solutions, will handle the process. The Settlement Administrator's contact information is provided in Section 18, below.

16. When is the Final Approval Hearing and do I have to attend?

The Final Approval Hearing has been set for [DATE], 2023 at [TIME] p.m. in Department 17 of the Superior Court of the State of California, County of Los Angeles, located at 312 N. Spring St., Los Angeles, CA 90012. You do not need to attend the hearing to be a part of the Settlement. However, if you wish to object to the Settlement, you may appear at the hearing. If physical access to the Court is restricted due to COVID-19 or other reasons, please contact the Settlement Administrator regarding alternative options to appear at the hearing.

17. When will I get money after the hearing?

Your Individual Settlement Payment from the Net Settlement Amount will be made within approximately 60 days after the Court's final approval of the Settlement.

GETTING MORE INFORMATION

18. Are more details available?

A copy of the entire Settlement Agreement was filed in this case as Exhibit A to the Declaration of Jose R. Garay in Support of Motion for Preliminary Approval, filed on February 15, 2023.

You may contact the Settlement Administrator, whose contact information is below:

Phoenix Class Action Administration Solutions
[ADDRESS]
[PHONE]
[FAX]

You may also contact Class Counsel, whose contact information is below:

Jose R. Garay
JOSE GARAY, APLC
249 E. Ocean Blvd. #814
Long Beach, CA 90802
Telephone: (949) 208-3400
Facsimile: (562) 590-8400
Email: jose@garaylaw.com

Christopher J. Hamner, Esq.
HAMNER LAW OFFICES, APLC
26565 West Agoura Road, Suite 200-197
Calabasas, California 91302
Telephone: (888) 416-6654

Email: chamner@hamnerlaw.com

Defendant is represented by:

BARRITT SMITH MINER LLP

Douglas A. Barritt

2601 Main Street, Suite 530

Irvine, California 92614

Phone: (949) 553-0700

Fax: (949) 553-0715

**PLEASE DO NOT CALL OR WRITE TO THE JUDGE OR TO THE COURT REGARDING
THIS NOTICE OR THE LAWSUIT.**

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.
Andre Landscape shall not oppose Class Counsel's request for a Class
Representative Enhancement in an amount not to exceed \$10,000. Should the Court
approve a lesser percentage or amount of fees and/or Litigation costs than the
amount that Class Counsel ultimately seeks, then the unapproved portion or portions
shall revert to the participating Settlement Class Members on a pro-rata basis.

7 H. Delivery of Settlement Funds to Class Administrator

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

25 I. Releases

26 1. Release as to All Settlement Class Members.

27 Upon the Date of Final Approval, Class Representative and all members of the Settlement
28 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

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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

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4 **SETTLEMENT AND RELEASE AGREEMENT**

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

9 **Recitals**

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

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

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

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

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

Terms and Conditions

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:

A. Provisional Approval Of This Settlement

1. Plaintiff shall submit a copy of this Agreement to the Court and shall move the Court to enter an Order as to all of the following:
 - a. For purposes of this Agreement only, Plaintiff and Andre Landscape stipulate to the certification of the following class:
 - (i) "Settlement Class members" means all hourly non-exempt individuals who worked for Andre Landscape within the "Class Period," which is defined as from August 14, 2016 through the date of the Court's preliminary approval of this Settlement.
 - (ii) "Aggrieved Employees" includes all Settlement Class Members who worked for Andre Landscape. The Parties agree for purposes of this Settlement the PAGA settlement period is within the "PAGA Time Period," defined as July 22, 2019 through the date of the Court's preliminary approval of this Settlement.
 - b. Provisionally approve all terms of this Agreement, and find that the terms of this Agreement are sufficient to warrant the sending of notice to the Class Members;
 - c. Approve the Notice Of Proposed Settlement And Final Fairness Hearing (the "Notice of Settlement") attached to this Agreement as Exhibit B;
 - d. Authorize the mailing of the Notice of Settlement to the Class Members;
 - e. Appoint and approve Jose Garay, APLC and Hamner Law Offices, APLC as Class Counsel ("Class Counsel");
 - 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, and enter a judgment permanently enjoining each of the Class Members from pursuing, or seeking to reopen, claims that are in any way related to those asserted in this action (the "Final Settlement Approval Hearing").

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

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

B. Settlement Amount

Andre Landscape shall pay \$250,000 ~~319,294.28~~ (hereinafter, the "Settlement Amount"), unless increased on a pro rata basis pursuant to Section K below, which consists of the following: (i) Class Counsel's fees in an amount not to exceed one-third (1/3) of the Settlement Amount which is currently approximately ~~\$83,333.34~~ ~~106,431.43~~ (ii) Class Administrator's costs of administration in the amount of approximately \$12,500 ("Administration Costs"), (iii) Plaintiff's incentive award not to exceed \$10,000 ("Enhancement Award"), and (iv) Class Counsel's costs not to exceed \$15,000, ~~and (v) \$5,000 as the penalties portion of the Settlement Amount as the PAGA Settlement Amount, 75% of which, or \$3,750, will be paid to the California Labor and Workforce Development Agency ("LWDA"), the remaining 25% of the PAGA Settlement Amount, or \$1,250, will be allocated to the Net Settlement Amount.~~ The Settlement Fund, less the foregoing five items, shall be referred to herein as the "Net Settlement Amount" or "NSA" (approximately ~~\$125,416.66~~ ~~175,362.85~~). Andre Landscape will not object to a request for Class Counsel's fees and class representative payments and other amounts set forth above. In addition, Andre Landscape shall pay the employer's portion of payroll taxes on settlement payments attributed as wages. Andre Landscape shall pay the Settlement Amount within 60 days of final court approval of the settlement.

~~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~~

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count against the individual work week value to determine the individual amount due to each Aggrieved Employee.

In no event shall Andre Landscape pay more than \$250,000~~319,294.28~~ excluding Defendant's share of payroll taxes arising from the payments made under this Settlement and unless increased on a pro rata basis pursuant to Section K below.

This is not a "claims-made" settlement, and Andre Landscape will not be entitled to any 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 \$125,416.66~~175,362.85~~, which is arrived at as follows: \$250,000~~319,294.28~~ (Settlement Fund) minus \$10,000 (Enhancement Award) ~~minus \$83,750 (PAGA penalty payment payable to the LWDA)~~ 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) = \$125,416.66~~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

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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.

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2.3. 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.

3.4. 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.

1 4.5. Taxes

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

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

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

- 16 (1) 20% as wages; and
17 (2) 60% as penalties
18 (3) 20% as interest.

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

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

27 The amounts paid under this Agreement do not represent a modification of any previously
28 credited hours of service under any employee benefit plan, policy or bonus program sponsored by
29 Andre Landscape. Such amounts will not form the basis for additional contributions to, benefits
30 under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by
31 Andre Landscape, policies or bonus programs. Any payments made under the terms of this
32 Resolution shall not be applied retroactively, currently or on a going forward basis as salary,
33 earnings, wages, or any other form of compensation for the purposes of Andre Landscape's benefit
34 plan, policy or bonus program. Andre Landscape retains the right to modify the language of their
35 benefit plans, policies and bonus programs to effect this intent and to make clear that any amounts
36 paid pursuant to this Resolution are not for "hours worked," "hours paid," "hours of service," or
37 any similar measuring term as defined by applicable plans, policies and bonus programs for
38 purpose of eligibility, vesting, benefit accrual or any other purpose, and that additional
39 contributions or benefits are not required by this Resolution.

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

C. Notice of Settlement

1. Within 14 calendar days of the entry of an Order granting preliminary approval of the terms of this Agreement and the Notice of Settlement, Andre Landscape shall provide to the Class Administrator a database of the names, last known home addresses, social security numbers (Class Administrator only), and number of pay periods worked during the Class Period as defined by payroll records of all Class 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

1 address, it will re-mail the Notice of Settlement to the Settlement Class member.
2 Class members receiving a re-mailed Notice of Settlement shall have an additional
3 15 days from the date of the re-mail to object or opt out. Further, any Notices
4 returned with a forwarding address to the Settlement Administrator, as non-
5 deliverable before the deadline date, shall be sent to the forwarding address affixed
6 thereto. ~~It shall be presumed that those Class Members actually received the re-~~
7 ~~mailed Notice of Settlement unless the re-mailed Notice of Settlement is returned to~~
8 ~~the Class Administrator as undeliverable within 15 calendar days after re-mailing. If~~
9 no address can be determined by the Settlement Administrator after these efforts, no
10 further efforts to determine an address shall be required.

Commented [A9]: See 5/30/2023 Order paragraph (9)(b)

- 6 6. Should any member of the Settlement Class timely submit a Pay Period Dispute
7 Form with a deficiency, the Settlement Administrator shall, within five (5) calendar
8 days of receipt by the Settlement Administrator of each timely submitted Pay Period
9 Dispute Form, send a deficiency notice. The deficiency notice will provide the
10 member of the Settlement Class no more than fourteen (14) days from the mailing of
11 the deficiency notice to postmark a written response to cure all deficiencies. The
12 Settlement Administrator shall contact the Parties regarding the dispute and the
13 Parties will work in good faith to resolve it. If the Parties are unable to resolve the
14 dispute, the Settlement Administrator will be the final arbiter of the Qualified Pay
15 Periods for each participating Settlement Class Member during the Class Period
16 based on the information provided to it. Any dispute not otherwise resolved by the
17 Administrator and the Parties shall be resolved by the Court.
- 18 7. The failure of a member of the Settlement Class to timely submit a Pay Period
19 Dispute or timely respond to a notice of deficiency shall invalidate the dispute
20 unless all Parties' counsel agree to allow the dispute.
- 21 8. No later than twenty (20) business days prior to the Final Settlement Approval
22 Hearing, the Settlement Administrator shall provide counsel for Andre Landscape
23 and Class Counsel with a declaration attesting to the completion of the Notice of
24 Settlement process, including the number of attempts to obtain valid mailing
25 addresses for and re-sending of any returned Notices, as well as the number of valid
26 Pay Period Dispute Forms, opt-outs and deficiencies which the Settlement
27 Administrator received.

28 D. Request for Exclusion

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

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

Commented [A10]: See 5/30/2023 order paragraph (5)(d)

The date of the initial mailing of the Notice of Settlement, and the date the signed Request to be Excluded was postmarked, shall be conclusively determined according to the records of the Settlement Administrator. Any Settlement Class member who timely and validly submits a

1 Request to be Excluded from the Settlement Class and this Resolution will not be entitled to any
2 individual settlement payment, will not be bound by the terms and conditions of this Resolution,
and will not have any right to object, appeal, or comment thereon.

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

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

7 E. Objections to Settlement

8 In order for any Settlement Class member to object to this Resolution, or any term of it, the
9 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
10 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
11 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
12 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
13 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,
14 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
15 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
16 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
17 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
18 Settlement Class member objects to this Resolution, the Settlement Class member will remain a
member of the Settlement Class and if the Court approves this Agreement, the Settlement Class
19 member will be bound by the terms of the Resolution and Final Approval in the same way and to
the same extent as a Settlement Class member who does not object. The date of mailing of the
20 Notice of Settlement to the objecting Settlement Class member shall be conclusively determined
according to the records of the Settlement Administrator. The Court retains final authority with
21 respect to the consideration and admissibility of any Settlement Class member objections. Any
Settlement Class member who submits an objection may also participate in the settlement.
22 Provided that the Settlement Administrator mailed the Notice of Settlement to a member of the
Settlement Class as set forth in Paragraph C, this deadline to file an objection shall apply
23 notwithstanding assertion by any member of the Settlement Class of non-receipt of the Notice of
Settlement. The Settlement Administrator shall send any objections it receives to Andre
Landscape's Counsel and Class Counsel within three (3) business days of receipt.

24 Provided that the Final Approval Order is consistent with the terms and conditions of this
25 Settlement, all Class Members who do not submit timely written objections to the Settlement or
orally object at the Final Settlement Approval Hearing hereby waive any and all rights to appeal
26 from the Final Approval Order and Judgment, including all rights to any post-Final Approval
Order proceeding and appellate proceeding, such as a motion to vacate or set-aside the Final
27 Approval Order and Judgment, a motion for new trial, and any extraordinary writ, and the Final
Approval Order and Judgment therefore shall become final and non-appealable at the time it is
28 entered. This waiver does not include any waiver of the right to oppose any appeal, appellate

proceedings, or post-Final Order proceedings. A modification by the Court of the requested amount of the Enhancement or Class Counsel's fees or costs shall not constitute a basis for appeal of the Final Approval Order within the meaning of this paragraph.

Class Representative and Andre Landscape will be permitted to respond in writing to such objections before the Final Settlement Approval Hearing. Class Representative waives any right to object to the Resolution, and hereby endorses the Resolution as fair, reasonable and adequate and 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.
- 1.2. 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.
- 2.3. 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").

3.4. Within the Motion for Final Approval, Class Counsel shall seek approval an award of attorneys' fees in an amount that shall not exceed one-third (1/3) of the gross total of the Settlement Amount which is currently ~~\$83,333.34~~106,431.43, plus costs not to exceed \$15,000. Andre Landscape shall not oppose Class Counsel's request for attorneys' fees if the request does not exceed one-third (1/3) of the gross settlement amount which is currently approximately ~~\$83,333.34~~106,431.43 plus costs not to exceed \$15,000. Andre Landscape shall not oppose Class Counsel's request for a Class Representative Enhancement in an amount not to exceed \$10,000. Should the Court approve a lesser percentage or amount of fees and/or Litigation costs than the amount that Class Counsel ultimately seeks, then the unapproved portion or portions shall revert to the participating Settlement Class Members on a pro-rata basis.

H. Delivery of Settlement Funds to Class Administrator

1. Within 30 days after entry by the Court of the Final Order and Notice of Entry of Judgment, the Class Administrator shall calculate the employer's share of payroll taxes, including FICA and FUTA, on the wage portion of the settlement payments to the Class. Andre Landscape shall then forward to the Class Administrator the Settlement Fund, which shall not exceed ~~\$250,000~~319,294.28.00 unless increased on a pro rata basis pursuant to Section K below, according to the deadlines stated in this Agreement, to pay the following as approved by the Court:

- a. ~~The~~ Within ten (10) days of receipt of the Settlement Fund, the Class Administrator shall issue payments to all Class Members, as calculated by the Class Administrator in accordance with Section B.1 above;
- b. ~~The~~ Within fourteen days (14) days of receipt of the Settlement Fund, the Class Administrator shall issue the Enhancement Award set forth in Section B.2 above;
- c. ~~The~~ Within fourteen (14) days of receipt of the Settlement Fund, the Class Administrator shall pay the Administration Costs set forth in Section B.3 above;
- d. ~~The~~ Within fourteen (14) days of receipt of the Settlement Fund, the Class Administrator shall pay employer's share of the payroll taxes, including FICA and FUTA, on the wage portion of the settlement payments to the Class which shall be in addition to the Settlement Fund;
- e. Within fourteen (14) days of receipt of the Settlement Fund, the Class Administrator shall pay Attorneys' fees and costs in the amount awarded by the Court to Class Counsel; and
- f. Within ten (10) days of receipt of the Settlement Fund, the Class Administrator shall issue ~~t~~The PAGA Settlement Amount set forth in Section B.1 above.

Commented [A11]: See 5/30/2023 Order paragraph (7)

I. Releases

1. Release as to All Settlement Class Members.

Upon the Date of Final Approval, Class Representative and all members of the Settlement Class, except those that make a valid and timely request to be excluded from the Class, will release any and all claims and causes of action, ~~known or unknown, contingent or accrued,~~ against Andre Landscape, Andre Landscape's franchisors, parents, subsidiaries, affiliates, owners, employees, and their insurers, attorneys and all agents thereof, including but not limited to Jeremy Andre and Joseph Andre as individuals, arising out of the facts and claims asserted in the ~~Action~~ operative First Amended Complaint for wage and hour violations, or any other claims or causes of action that could have reasonably been asserted in the Litigation, based upon the facts alleged, including but not limited to meal and rest breaks; unpaid wages, including minimum wages, regular wages, overtime under California law, wage statement violations, separation pay violations, unfair business practices; ~~and PAGA,~~ and any other applicable provisions of state or local law, including the applicable IWC wage order.

Commented [A12]: See 5/30/2023 order paragraph (5)(a) and (b).

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

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the operative First Amended Complaint, and the PAGA Notice letter to the California Labor Workforce

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1 Development Agency ("LWDA"). Aggrieved Employees who op-out will still receive an
2 individual share for the PAGA claims and will be deemed to have released PAGA claims.

Commented [A13]: See 5/30/2023 order paragraph (5)(c)

Commented [A14]: See 5/30/2023 order paragraph (5)(d)

3 2.3. General Release by Class Representative Only.

4 In addition to the Release as to All Settlement Class Members, Class Representative makes
5 the additional following general release of all claims, known or unknown. Class Representative
6 releases Andre Landscape, and each of its respective subsidiaries, affiliates, predecessors or
7 successors in interest, franchisors, owners, officers, directors, shareholders, employees, attorneys,
8 agents, assigns, insurers, and re-insurers of any of them, including but not limited to Jeremy Andre
9 and Joseph Andre as individuals, from all claims, demands, rights, liabilities and causes of action
of every nature and description whatsoever, known or unknown, asserted or that might have been
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.")

10 With respect to the General Release, Class Representative stipulates and agrees that, upon
11 the Date of Final Approval, Class Representative shall be deemed to have expressly waived and
12 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:

13 A general release does not extend to claims that the creditor or releasing party does not
14 know or suspect to exist in his or her favor at the time of executing the release and that, if
15 known by him or her, would have materially affected his or her settlement with the debtor
or released party.

16 Accordingly, if the facts relating in any manner to this Resolution are found hereafter to be
17 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.

18 J. Miscellaneous Provisions

19 1. Stay of Litigation

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

22 2. Interpretation of the Agreement

23 This Agreement constitutes the entire agreement between Class Representative and Andre
24 Landscape. Except as expressly provided herein, this Agreement has not been executed in reliance
upon any other written or oral representations or terms, and no such extrinsic oral or written
25 representations or terms shall modify, vary or contradict its terms. In entering into this Agreement,
the Parties agree that this Agreement is to be construed according to its terms and may not be
26 varied or contradicted by extrinsic evidence. The Agreement will be interpreted and enforced
under the laws of the State of California, both in its procedural and substantive aspects, without
27 regard to its conflict of laws provisions. Any claim arising out of or relating to the Agreement, or
the subject matter hereof, will be resolved solely and exclusively in the Superior Court of the State
28 of California for the County of Los Angeles, and Class Representative and Andre Landscape

1 hereby consent to the personal jurisdiction of the Judge over them solely in connection therewith.
2 Class Representative, on his own behalf and on behalf of the Settlement Class, and Andre
3 Landscape participated in the negotiation and drafting of this Agreement and had available to them
4 the advice and assistance of independent counsel. As such, neither Class Representative nor Andre
5 Landscape may claim that any ambiguity in this Agreement should be construed against the other.

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

11 3. Further Cooperation

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

16 4. Confidentiality of Documents

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

21 5. Counterparts

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

25 6. Authority

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

28 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: _____, 20222023

Ruben Duarte

Dated: _____, 2022

Andre Landscape Service, Inc.

By:

Title:

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THIS IS AN IMPORTANT COURT APPROVED NOTICE. READ CAREFULLY.

Duarte v. Andre Landscape Service, Inc.
Los Angeles County Superior Court
Case No. 20STCV31056

If you worked as a non-exempt hourly employee for Andre Landscape, Inc. (“Defendant”) in California at any time from August 14, 2016 through INSERT PRELIMINARY APPROVAL DATE, you are eligible to receive compensation from a class action settlement.

- You have been identified as a Class Member (defined below) in a Lawsuit (defined below) brought by a former employee of Defendant. Defendant denies all allegations and contends it has complied with California law at all relevant times. However, to avoid the continuing expense of litigation, the Parties have reached a settlement of highly disputed claims (the “Settlement”). The Court has preliminarily approved the Settlement, finding it to be fair, reasonable, adequate, and in the best interests of the Class Members.
- The Settlement will affect all of Defendant’s non-exempt hourly California employees from August 14, 2016 through INSERT PRELIMINARY APPROVAL DATE (the “Class Period”).
- If the Court grants final approval of the Settlement, you will receive a settlement payment.

*A court authorized this notice. This is not an advertisement.
You are not being sued. Your rights will be affected by this notice and settlement.*

YOUR LEGAL RIGHTS AND OPTIONS	
<u>PARTICIPATE IN THE SETTLEMENT – NO ACTION REQUIRED</u>	Stay in this Lawsuit. Receive a payment. Give up certain rights. By doing nothing, you become part of the Settlement Class (defined below), will receive a settlement payment, and will give up certain rights to sue Defendant separately about the legal claims raised in this Lawsuit.
<u>OBJECT TO THE SETTLEMENT – ACTION REQUIRED</u>	Stay in this Lawsuit. May give up certain rights. If you object to the Settlement, you will remain a member of the Class (defined below), and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object.
<u>ASK TO BE EXCLUDED – ACTION REQUIRED</u>	Opt out of the Settlement. Receive no payment from the settlement for the Class claims, but receive an individual settlement share for civil penalties under the California Private Attorneys General Act of 2004 (“PAGA”). Keep rights to individually pursue only the Class claims. If you opt out of the Settlement, you won’t receive any share of the Class payment, but you retain the right to sue Defendant separately about the Class claims in this Lawsuit. However, even if you opt out, you will still receive an individual settlement share for claims for civil penalties pursuant to

	PAGA and will be deemed to have released the PAGA claims.
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- To object to the Settlement or to ask to be excluded, you must act before [DATE], 2023.
- **Any questions?** Read on or contact Class Counsel (defined below) or the Settlement Administrator (defined below).

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION	PAGE 3-5
1. Why did I get this notice?	
2. What is the Lawsuit about?	
3. What is a class action and who is involved?	
4. Why is this Lawsuit a class action?	
5. What are the terms of the proposed Settlement?	
WHO IS IN THE CLASS	PAGE 5
6. Am I part of this Class?	
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YOUR RIGHTS AND OPTIONS	PAGE 5-7
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15. Who is handling the settlement administration process?	
16. When is the Final Approval Hearing and do I have to attend?	
17. When will I get money after the hearing?	
GETTING MORE INFORMATION.....	PAGE 8-9
18. Are more details available?	

BASIC INFORMATION

1. Why did I get this notice?

Records show that you are a potential member of the Class because you worked for Defendant in California as a non-exempt hourly employee during the Class Period. The Court has given preliminary approval to the Settlement of a class action lawsuit that may affect your legal rights and ordered that this Notice be sent to you to explain your rights in connection with the Settlement. The Court has determined only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate, and reasonable; the Court has not made any ruling on the merits of Plaintiff's claims or Defendant's defenses.

The lawsuit is known as *Duarte v. Andre Landscape Service, Inc.*, Case No. 20STCV31056 (the "Lawsuit"). You can view the Lawsuit's records online by visiting the Court's website (<https://www.lacourt.org/casesummary/ui/>), entering the Case Number in the search box, and selecting "Search."

2. What is this Lawsuit about?

The Lawsuit is about whether Defendant failed to pay all wages including overtime, failed to provide proper meal and rest breaks, failed to provide accurate itemized wage statements, and failed to timely pay all wages due upon separation of employment to its non-exempt hourly employees as required by applicable California laws. Based on these alleged violations, the Lawsuit also alleges violations of California's Labor Code and Unfair Competition Law ("UCL") and seeks civil penalties for these alleged violations under PAGA.

Defendant denies any liability or wrongdoing associated with the claims alleged in the Lawsuit.

3. What is a class action and who is involved?

In an employment class action lawsuit such as this, a person called the "Class Representative" sues his or her former employer on behalf of other current or former employees who may have similar claims. The people who may have similar claims are called "Class Members," and Class Members are collectively referred to as "the Class." The Class Representative is also called the Plaintiff. There is one Plaintiff/Class Representative in this Action, Rubin Duarte. The company that was sued (in this case Andre Landscape, Inc.) is called the Defendant. In class action litigation, one Court resolves the issues for everyone in the Class in one lawsuit, except for those people who choose to exclude themselves from the Class.

4. Why is this Lawsuit a class action?

As part of the Settlement, Plaintiff and Defendant agreed to conditionally certify the Lawsuit as a class action for all of Plaintiff's alleged claims for settlement purposes only and to ask the Court to approve the Settlement.

By agreeing to the terms of the settlement, Defendant does not admit any of the allegations in this Action, that it has done anything wrong or that any Class Member has suffered any damage. Defendant settled this case to avoid additional expense, inconvenience, and interference with its business operations. The Court has not ruled on the merits of Plaintiff's claims or the defenses of Defendant. Defendant retains

the right to defend itself against any of the allegations involved in the Lawsuit if for any reason the Settlement is not approved by the Court.

5. What are the terms of the proposed Settlement?

The major terms of the Settlement are as follows:

1. Defendant has agreed to pay ~~\$250,000~~319,294.28. This ~~\$250,000~~319,294.28 total settlement figure is known as the “Gross Settlement Amount,” unless increased on a pro rata basis according to the terms of the Settlement Agreement.
2. Plaintiff Rubin Duarte has agreed to a general release of all of his claims against Defendant.
3. Plaintiff seeks the following allocation of the Gross Settlement Amount:
 - a. Up to one-third (1/3) of the Gross Settlement Amount (or currently approximately ~~\$83,333.34~~106,431.43) for Class Counsel’s attorneys’ fees;
 - b. Up to \$15,000 for reimbursement of Class Counsel’s litigation costs;
 - c. An enhancement payment of up to \$10,000 for Plaintiff Rubin Duarte for dedicating personal time and performing work in connection with the Lawsuit, assisting Class Counsel in investigating the alleged claims, being available to answer Class Counsel’s questions, providing a general release of claims, and undertaking the risks of filing the Lawsuit;
 - d. All costs of the Settlement Administrator, which are currently estimated to be no more than \$12,500; and
 - e. \$5,000 as PAGA civil penalties. Per Labor Code Section 2699(i), seventy-five percent (75%) of this amount (\$3,750) will be payable to the California Labor and Workforce Development Agency (“LWDA”). The remaining twenty-five percent (25%), or \$1,250, will be payable to the Class as the “PAGA Amount.” Only those Settlement Class members who worked the time period of August 14, 2019 through the date of Preliminary Approval (“Aggrieved Employees”) will share in the recovery of \$1,250.00.
4. After the above deductions from the Gross Settlement Amount, the remaining funds will be distributed to Class Members who do not opt out of the Settlement on a pro rata basis. To ensure timely payment, please contact and inform the Settlement Administrator listed in Section 18, below, of any changes to your mailing address.

If the Court approves this proposed allocation, the Parties estimate that ~~\$125,416.66~~175,362.85 (the “Net Settlement Amount”) will be distributed to Class Members who do not request to be excluded (the “Participating Class Members”) according to the following formula:

The Net Settlement Amount 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.

Your estimated Individual Settlement Payment is listed in Section 8 of this Notice. Employee-side payroll deductions will be made to your Individual Settlement Payment for state and federal withholding taxes and any other applicable payroll deductions owed by you as a result of the payment, with 20% allocated to wages, 60% allocated to penalties and interest, and 20% allocated to expense reimbursements. Defendant will pay employer-side taxes separate and apart from the Gross Settlement Amount.

Nothing in this Notice or the Settlement is intended to be tax advice. You should consult your tax advisor for any tax issues pertaining to this Settlement.

WHO IS IN THE CLASS?

6. Am I part of this Class?

The "Settlement Class" consists of all persons who worked as non-exempt hourly employees in California for Defendant at any time from August 14, 2016 through [INSERT PRELIMINARY APPROVAL DATE].

7. I'm still not sure if I am included.

If you still are not sure whether you are included in the Class, you can get free help by contacting Phoenix Class Action Administration Solutions, the "Settlement Administrator," at the designated phone number for this matter at [insert telephone number], or by calling or writing the lawyers representing the Class in this case ("Class Counsel"), at (949) 208-3400.

YOUR RIGHTS AND OPTIONS

You have to decide whether to stay in the Class, object to the Settlement, or ask to be excluded from the Settlement. These options are further explained below, including the dates by which you need to take any action.

8. What is my approximate Individual Settlement Payment?

According to payroll records maintained by Defendant, your total number of Qualified Pay Periods during the Class Period is [REDACTED]. As a result, your estimated Individual Settlement Payment will be \$ [REDACTED].

You do not need to do anything further to receive your Individual Settlement Payment, other than to ensure that the Settlement Administrator has an accurate mailing address for you. It is important that

you contact and inform the Settlement Administrator listed in Section 18, below, of any changes to your mailing address for timely payment.

If you believe your total number of Qualified Pay Periods (shown above) is not accurate, you may complete and submit the enclosed Pay Period Dispute Form to the Settlement Administrator, indicating what you believe is the correct number of Qualified Pay Periods. Please be advised that your number of Qualified Pay Periods is presumed to be correct, unless you submit documents to support your contention to the Settlement Administrator no later than [DATE], 2023³².

9. What rights am I releasing if I participate in the Settlement?

If the Court grants final approval of the Settlement, each Class Member who does not validly opt-out will be mailed an Individual Settlement Payment. In addition, each Class Member who does not validly opt-out, will release any and all claims and causes of action against Andre Landscape, Andre Landscape's franchisors, parents, subsidiaries, affiliates, owners, employees, and their insurers, attorneys and all agents thereof, including but not limited to Jeremy Andre and Joseph Andre as individuals, arising out of the facts and claims asserted in the operative First Amended Complaint for wage and hour violations, or any other claims or causes of action that could have reasonably been asserted in the Litigation, based upon the facts alleged, including but not limited to meal and rest breaks; unpaid wages, including minimum wages, regular wages, overtime under California law, wage statement violations, separation pay violations, unfair business practices; and any other applicable provisions of state or local law, including the applicable IWC wage order. ~~on behalf of themselves, and on behalf of all those who claim by and through them, or in their stead, including, but not limited to agents, attorneys, representatives, predecessors, successors and assigns release any and all claims and causes of action, known or unknown, contingent or accrued, against Andre Landscape, Andre Landscape's franchisors, parents, subsidiaries, affiliates, owners, employees, and their insurers, attorneys and all agents thereof, including but not limited to Jeremy Andre and Joseph Andre as individuals, arising out of the facts and claims asserted in the Action for wage and hour violations, or any other claims or causes of action that could have reasonably been asserted in the Litigation, based upon the facts alleged, including but not limited to meal and rest breaks; unpaid wages, including minimum wages, regular wages, overtime under California law, wage statement violations, separation pay violations, unfair business practices; and PAGA, and any other applicable provisions of state or local law, including the applicable IWC wage order.~~

For members of the Class who do not validly opt out, the release period shall run from August 14, 2016 through [INSERT PRELIMINARY APPROVAL DATE] for non-exempt hourly employees.

The proposed Settlement includes the settlement of claims for civil penalties under PAGA. An employee may not request exclusion from the settlement of a PAGA claim. All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the operative First Amended Complaint, and the PAGA Notice letter to the California Labor Workforce Development Agency ("LWDA"). Aggrieved Employees who opt-out will still receive an individual share for the PAGA claims and will be deemed to have released PAGA claims. Thus, if the court approves this Settlement, then even if you request exclusion from the Settlement, you will still

~~receive an individual settlement share for the PAGA claims and will be deemed to have released the PAGA claims. A request to be excluded will preserve your right to individually pursue only the remaining Class claims.~~

10. How do I object to the Settlement?

If you are a Class Member and would like to object to the Settlement, you must not submit a request to be excluded (*i.e.*, must not opt out).

If you submit both a request to be excluded and an objection, you will be excluded from the Settlement (see sections 11 and 12 below), and your objection will not be considered.

To object in writing, mail a written objection to the Settlement Administrator (at the address in Section 18, below) setting forth the grounds of objection, along with any supporting documents postmarked no later than [DATE], 2023~~2~~, which is 45 days from the date that this Notice was mailed. All written objections must be signed and must contain your address, telephone number, and a reference to the Lawsuit. However, 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.

You may also appear personally or through an attorney, at your own expense, at the Final Approval Hearing to present your objection directly to the Court. If you object, but the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as a Class Member who does not object.

11. Why would I ask to be excluded?

You have the right to exclude yourself from the Settlement. If you exclude yourself from the Class — sometimes called “opting-out” of the Class — you will only receive an individual settlement share for the PAGA claims and will not receive any compensation from the Settlement for the Class claims. If you exclude yourself, you will not be legally bound by the Court’s disposition of the Class claims, but you will still be deemed to have released the PAGA claims.

12. How do I ask to be excluded from the Class?

If you are a member of the Class described above and would like to exclude yourself from the Class, you need to submit a written request for exclusion (“Request to be Excluded”) must be signed by the Settlement Class member or his or her authorized representative and must be sent to the Settlement Administrator at the address below in Section 18, and it must be postmarked on or before [DATE], 2023~~2~~.

The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a Request to be Excluded has been timely submitted. Any Class Member who requests to be excluded from the Class will only receive an individual settlement share for the PAGA claims, will release only his or her PAGA claims, will not receive any compensation from the Settlement for the Class claims, and will not have any right to object, appeal, or comment thereon. Class Members who fail to submit a valid and timely Request to be Excluded on or before [DATE], 2023~~2~~, will be bound by all terms of the Settlement and any final disposition entered in this Class Action if the Court approves the Settlement.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court preliminarily decided that Jose Garay, APLC and Hamner Law Offices, APLC are qualified to represent you and all Class Members in this Lawsuit. These law firms are also called “Class Counsel” in the context of this case.

14. How will the lawyers be paid?

As part of the Settlement with Defendant, Class Counsel has requested one-third of the Gross Settlement Amount (currently, that is equal to approximately ~~\$83,333.34~~\$106,431.43) in attorneys’ fees, plus costs not to exceed \$15,000 to be paid from the Gross Settlement Amount to compensate Class Counsel for their work on this matter. You will not have to pay Class Counsel’s fees and costs from your Individual Settlement Payment.

THE SETTLEMENT, APPROVAL, AND PAYMENT PROCESS

15. Who is handling the Settlement Administration process?

The Settlement Administrator, Phoenix Class Action Administration Solutions, will handle the process. The Settlement Administrator’s contact information is provided in Section 18, below.

16. When is the Final Approval Hearing and do I have to attend?

The Final Approval Hearing has been set for [DATE], 202~~32~~ at [TIME] p.m. in Department 17 of the Superior Court of the State of California, County of Los Angeles, located at 312 N. Spring St., Los Angeles, CA 90012. You do not need to attend the hearing to be a part of the Settlement. However, if you wish to object to the Settlement, you may appear at the hearing. If physical access to the Court is restricted due to COVID-19 or other reasons, please contact the Settlement Administrator regarding alternative options to appear at the hearing.

17. When will I get money after the hearing?

Your Individual Settlement Payment from the Net Settlement Amount will be made within approximately 60 days after the Court’s final approval of the Settlement.

GETTING MORE INFORMATION

18. Are more details available?

A copy of the entire Settlement Agreement was filed in this case as Exhibit A to the Declaration of Jose R. Garay in Support of Motion for Preliminary Approval, filed on [INSERT DATE] February 15, 202~~32~~.

You may contact the Settlement Administrator, whose contact information is below:

Phoenix Class Action Administration Solutions

[ADDRESS]

[PHONE]

[FAX]

You may also contact Class Counsel, whose contact information is below:

Jose R. Garay
JOSE GARAY, APLC
249 E. Ocean Blvd. #814
Long Beach, CA 90802
Telephone: (949) 208-3400
Facsimile: (562) 590-8400
Email: jose@garaylaw.com

Christopher J. Hamner, Esq.
HAMNER LAW OFFICES, APLC
26565 West Agoura Road, Suite 200-197
Calabasas, California 91302
Telephone: (888) 416-6654
Email: chamner@hamnerlaw.com

Defendant is represented by:

BARRITT SMITH MINER LLP
Douglas A. Barritt
2601 Main Street, Suite 530
Irvine, California 92614
Phone: (949) 553-0700
Fax: (949) 553-0715

**PLEASE DO NOT CALL OR WRITE TO THE JUDGE OR TO THE COURT REGARDING
THIS NOTICE OR THE LAWSUIT.**

Exhibit B

Exhibit C

Thank you for your Proposed Settlement Submission

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>

Wed 12/28/2022 12:44 PM

To: Jose Garay <jose@garaylaw.com>

12/28/2022 12:44:10 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private Attorneys General Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)

Exhibit D

July 21, 2020

Filed online with LWDA

California Labor and Workforce
Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Sent via certified mail to:

Jeremy D. Andre
ANDRE LANDSCAPE SERVICE, INC.
521 N. Virginia Ave.
Azusa, CA 91702

Re: Written Notice Pursuant to Labor Code, sections 2698, *et seq.*
By Rubin Duarte

To Whom It May Concern:

Pursuant to California Labor Code § 2698, *et seq.*, Rubin Duarte submits this written notice of Labor Code and Industrial Welfare Commission Wage Order violations by his employer, Andre Landscape Service (“Employer”). Pursuant to Labor Code § 2698, *et seq.*, Mr. Duarte, a former landscape and gardening worker for Employer, seeks to represent himself and other aggrieved employees in a PAGA action against Employer as set forth below. For purposes of this notice, Mr. Duarte contends “aggrieved employees” includes individuals who worked for Employer in California as a landscape and gardening worker.

Written Notice of Claims

Labor Code, § 2699.3(a) requires employees seeking to file a claim under PAGA to provide written notice to the Labor and Workforce Development Agency and the employer identifying violations of Labor Codes. Section 2699.5 provides:

- (a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of section 2699 alleging a violation of any provision listed in section 699.5 shall commence only after the following requirements have been met: (1) the aggrieved employee or representative shall

give written notice by certified mail to the labor and workforce development agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

Legal Claims Applicable to Labor Code §2699.3(a) Written Notice Requirement

Employer violated the following Labor Codes, all of which appear in Section 2699.5, and thus require written notice consistent with Section 2699.3(a):

- Labor Code §§ 201-203 – Failure to Pay All Wages Owed at Termination;
- Labor Code § 226 – Knowing and Intentional Failure to Provide Accurate, Itemized Wage Statements;
- Labor Code § 226.7 – Failure to Provide Rest Breaks;
- Labor Code § 226.7 – Failure to Provide Rest Breaks;
- Labor Code § 1174 – Failure to Keep Accurate Records;
- Labor Code §§ 510, 1194 and 1197 – Failure to Pay Overtime and Minimum Wages

Legal and Factual Basis to Support Claims

Labor Code §§ 201- 203

Labor Code §§ 201-203 requires employers to pay all outstanding wages owed to employees at termination. If the employee resigns, the employer has approximately 72 hours to make final payment; if the employee is terminated, payment is due immediately. See Labor Code § 203.

Mr. Duarte alleges Employer failed to pay Mr. Duarte and other employees' all wages owed at termination. Mr. Duarte alleges Employer did not accurately record the actual hours he typically worked. Mr. Duarte was not provided a review of Employer's actual hours and commissions before the hours and commissions were submitted for actual payment. Mr. Duarte's final paycheck did not have any itemization for all monies owed.

Wage Statement Violations

Labor Code section 226 states:

- (a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders

of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

(e) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys fees.

Employer has never provided any of the required information to its workers like Mr. Duarte, and has knowingly and intentionally failed to comply with subsection Labor Code section 226(a).

Meal Periods

Mr. Duarte contends Employer instituted policies and practices that did not comply with Labor Code §§ 512, 226.7 and Industrial Welfare Commission Wage Order 5-2001(11) (meal periods).

Labor Code § 512 and Wage Order 5-2001 requires employers to provide their employees with 30 minutes meal periods in which the employee is free of all work duties and free to leave the premises for any shifts six hours or more. The meal period must take place within the first five hours worked and can only be waived by mutual consent. If an employer implements practices and procedures that prevent the employee from a meaningful choice for a meal period, then the employer must pay one hour of pay to the employee for each day in which the meal period is not provided. See Wage Order 5-2001(11); see also *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040 (“On the other hand, an employer may not undermine a form policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks.”); see also, *Jamiez v. Daijohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1304-1305 (violation can be proved by showing common scheduling policy that made taking breaks extremely difficult.)

Mr. Duarte contends that he was regularly provided workloads that prevented him from having the ability to take a timely 30 minute meal period within the first five hours of any shift greater than six hours. Mr. Duarte was often sent to work sites that required his services be completed in a certain time frame. In order to meet that deadline, it was often necessary to work straight through without a timely 30 minute meal period. Duarte contends Employer failed to accurately record when he was not able to take a timely meal period.

Employer apparently did not have any policy or practice to follow if there was a meal period violation. Mr. Duarte was never paid one hour of pay for each day he was denied a meal period. Mr. Duarte suffered injury by being required to work through his meal periods without being appropriately compensated for doing so.

Rest Breaks

Mr. Duarte contends Employer instituted policies and practices that did not comply with Labor Code § 226.7 and Industrial Welfare Commission Wage Order 5-2001(12) (rest breaks).

Labor Code § 226.7 requires employers to provide employees with rest breaks consistent with the IWC Wage Orders. Wage Order 5-2001 requires employers to authorize and permit employees to take rest breaks of 10 minutes net rest time per every four (4) hours worked. For each day in which an employer fails to authorize or permit a rest break, the employer owes the employee one hour of pay.

Employer apparently did not have any policy or practice to follow through if there was a rest period violation. Mr. Duarte was never paid one hour of pay for each day he was denied a rest period. Mr. Duarte suffered injury by being required to work through his rest periods or receiving late rest periods without being appropriately compensated for doing so.

Labor Code, section 1174 Pay Records

Labor Code § 1174 requires employers to keep “payroll records showing the hours worked daily by and the wages paid to the employee”. An employer may be liable under § 1174 if it fails to record when employees report to work, the start and end time of their shifts, and the total hours worked or meal periods. See *Carrillo v. Schneider Logistics, Inc.*, (2011) 823 F. Supp.2d 1040, 1044.

Mr. Duarte contends Employer failed to keep accurate records of the hours employees worked each day. Employer did not record the actual hours its hourly, non-exempt employees worked each day and failed to accurately record regular hours, overtime, meal periods, or shifts less than two hours. Mr. Duarte contends his pay records did not show an hour’s pay for any days in which he was not free to take a 30 minutes meal period or ten minute rest break. Instead, Mr. Duarte contends his pay records show only the maximum hours Employer was willing to pay for his workday, limiting his workday to 8 hours, when Mr. Duarte often worked more than 8 hours.

Unpaid Overtime and Minimum Wage

Employer failed to pay overtime wages to Mr. Alvarado and other similarly situated workers, and in so doing, Employer willfully violated the provisions of Labor Code sections 510, 1194, 1198, 1199, IWC Wage Orders, and California Code of regulations, Title 8, section 11160(3). Labor Code §§ 510, 1194 and 1197 require employers to pay employees for minimum wage and overtime wages for hours worked over 8 per day and/or over 40 hours per week.

California law requires employers to pay overtime compensation to all non-exempt employees for all hours worked over 8 in a day or 40 per week for overtime, and over 12 in a day at double-time.

Employer failed to record overtime hours and / or changed or edited hours recorded to show no overtime worked by Mr. Duarte and Employer's similarly situated workers. Because these hours were not recorded and / or were changed or edited by Employer, Mr. Duarte and all similarly situated workers for Employer were at times compensated at an amount below California's minimum wage requirements. Mr. Duarte contends that he and other similarly situated workers for Employer were not paid for all overtime hours worked, and as a result were also not paid minimum wage as required by law.

Conclusion

Pursuant to Labor Code, section 2699(a), if the LWDA does not respond to this Notice in 60 days, Mr. Duarte will move forward with his PAGA claims on behalf of herself and the State of California.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

HAMNER LAW OFFICES, APLC

/s/ Christopher J. Hamner

Christopher J. Hamner, Esq.

CJH/vv