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23 DANA MARIE SCHNEIDER and JAMES PAUL HABEGER

24
25 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
26 **FOR THE COUNTY OF LOS ANGELES**

27 LAZARO AYALA, an individual;
28
29 Plaintiff,
30
31 vs.

32 PACIFIC VISTA LANDSCAPE SERVICES,
33 INC., a California limited liability company;
34 DANA MARIE SCHNEIDER, an individual;
35 JAMES PAUL HABEGER, an individual; and
36 DOES 1 through 100, Inclusive;
37
38 Defendants.

CASE NO.: 20STCV40071

Assigned to: *Honorable Mark V. Mooney,*
Dept. 68

**STIPULATION BY ALL PARTIES FOR
ORDER APPROVING SETTLEMENT
PURSUANT TO CALIFORNIA LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT AND ENTERING
JUDGMENT**

Complaint Filed: October 19, 2020
Trial Date: April 11, 2022

39 Plaintiff LAZARO AYALA ("Plaintiff") and Defendants PACIFIC VISTA LANDSCAPE
40 SERVICES, INC., DANA MARIE SCHNEIDER and JAMES PAUL HABEGER ("Defendants")

(collectively, “the Parties”), by and through their respective counsel of record, hereby stipulate as follows:

DEFINITIONS

1. “Aggrieved Employee” or “Aggrieved Employees” means all current and former, exempt and non-exempt, employees who worked at least one pay period for Defendants in California at any time during the PAGA Period.
2. The “PAGA Period” shall be from August 16, 2019 through the date the Court enters the order granting final approval of the PAGA settlement.
3. “Aggrieved Employees’ Counsel” means Sarkis Sirmabekian, Esq. of Sirmabekian Law Firm, PC.
4. “Aggrieved Employees’ Counsel Costs” means verified litigation costs in an amount not to exceed \$3,050.00 as approved by the Court.
5. “Aggrieved Employees’ Counsel Fees” means the amount to be paid, after Court approval, to Aggrieved Employees’ Counsel for all past and future attorneys’ fees incurred by Aggrieved Employees’ Counsel in the Lawsuit on behalf of Representative Plaintiff and the Aggrieved Employees including, but not limited to, future attorneys’ fees incurred in securing final approval of the Settlement in the amount of Thirteen Thousand Three Hundred and Thirty-Three Dollars and Thirty-Three Cents (\$13,333.33), representing one-third of the PGSA.
6. “Agreement” means this Stipulation and Settlement Agreement, including any attached exhibits.
7. “Complaint” means the operative Complaint filed in the Lawsuit.
8. “Counsel for Defendants” or “Defense Counsel” means Jennifer Raphael Komsky, Esq., Nathan T. Lowery, Esq., Daniel D. Marvizi, Esq.
9. “Court” means the Los Angeles Superior Court, in which the Lawsuit is currently pending, the Honorable Judge Mark V. Mooney presiding. Court shall also mean any other Court that acquires proper jurisdiction of this Lawsuit.
10. “Distributable Amount” means the amount that is distributable to the Aggrieved Employees, and equals the PGSA less Aggrieved Employees’ Counsel Fees, Aggrieved Employees’

Counsel Costs, Settlement Administration Costs, Representative Plaintiff Enhancement Payment, and payment to the California Labor & Workforce Development Agency (“LWDA”).

11. “Effective Date” means the later of (a) the date of entry of Order granting approval of this Settlement, if no objection to the Settlement is filed, (b) the date on which the time for all appeals from objections to the Settlement has passed, if one or more objections to the Settlement are filed, and (c) if an appeal is taken, the date on which any reviewing court issues a decision, the time for further appeal has expired, and the trial court has regained jurisdiction.

12. “Gross Settlement Amount” means the total amount of Seventy-Five Thousand Dollars and No Cents (\$75,000.00), the maximum amount to be paid by Defendants pursuant to the terms of this Agreement, regardless of how the court rules on the first or subsequent motions for approval.

13. “Lawsuit” means this lawsuit and the operative Complaint in the matter entitled Lazaro Ayala v. Pacific Vista Landscape Services, Inc., et al., Case No. 20STCV40071, Los Angeles Superior Court.

14. “Notice of Settlement” means the form to be prepared and approved by both Counsel for Defendants and Aggrieved Employees’ Counsel and sent to the Aggrieved Employees with the Settlement Payments to inform them of the material terms of the Agreement and the Released Claims.

15. “Notice Returns” means envelopes containing the Notice of Settlement that were mailed by the Settlement Administrator to Aggrieved Employees but were undelivered and returned to the Settlement Administrator by the United States Postal Service.

16. “Order and Judgment” means the order and judgment entered by the Court pursuant to the terms set forth in this Agreement (i) approving finally and fully the terms contained in this Agreement; (ii) permanently enjoining and forever barring from prosecuting any and all Released Claims against Defendants or the Released Persons; (iii) entering a final judgment in the Lawsuit; and (iv) retaining jurisdiction to enforce the terms of this Agreement following approval of the Settlement. Aggrieved Employees’ Counsel will submit with its approval

1 motion a proposed Order and Judgment – the form and content of which is agreed to by
2 Counsel for Defendants.

3 17. “Personal Release” means the Representative Plaintiff’s irrevocable and unconditional release,
4 acquittal, and discharge of the Released Persons and all persons and/or corporate entities acting
5 by, through, under or in concert with any of them, or any of them, from any and all complaints,
6 claims, liabilities, obligations, promises, agreements, controversies, damages, costs, losses,
7 debts and expenses (including attorneys’ fees and costs actually incurred), of any nature
8 whatsoever, including but not limited to the release of any and all claims arising under any of
9 the following, as amended: the National Labor Relations Act (“NLRA”), Title VII of the Civil
10 Rights Act of 1964, Sections 1981 through 1988 of Title 42 of the United States Code, the
11 Employee Retirement Income Security Act of 1974 (“ERISA”), the Americans with
12 Disabilities Act of 1990 (“ADA”), the Fair Labor Standards Act (“FLSA”), the Occupational
13 Safety and Health Act (“OSHA”), the Consolidated Omnibus Budget Reconciliation Act of
14 1985 (“COBRA”), the Genetic Information Nondiscrimination Act (“GINA”), the Family and
15 Medical Leave Act (“FMLA”), the Worker Adjustment and Retraining Notification Act
16 (“WARN”), the California Fair Employment and Housing Act (“FEHA”), the Family and
17 Medical Leave Act of 1993 (“FMLA”) and the California Family Rights Act (“CFRA”), the
18 Private Attorneys’ General Act (“PAGA”), the California Worker Adjustment and Retraining
19 Notification Act (“Cal-WARN”), the California Business and Professions Code, including the
20 Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, the California Minimum Wage
21 Law, the Equal Pay Law for California, the California Labor Code (including specifically,
22 Section 132a) and California Wage Orders, together with any alleged violation of the United
23 States or any state Constitution, any local, state or federal law, regulation or ordinance, and/or
24 public policy, contract or tort or common-law, any claim for injunctive or declaratory relief
25 any violation of the penal code, and any other claim whether cognizable at law or in equity
26 having any bearing whatsoever on Representative Plaintiff’s application for employment,
27 employment with, or separation of employment from the Released Persons, which
28

1 Representative Plaintiff ever had, now has, or shall have, from the beginning of time to the
2 date of the Effective Date.

3 18. As to the foregoing claims, Representative Plaintiff expressly waives the benefits of California
4 Civil Code §1542. Civil Code §1542 provides:

5
6 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***
7 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***
8 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***
9 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***
10 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE***
11 ***DEBTOR OR RELEASED PARTY***
12

13 19. "Per Capita Payment" means the amount payable to each Aggrieved Employee on an equal per
14 capita basis.

15 20. "Redirected Notice" means a second Notice of Settlement mailed by the Settlement
16 Administrator to a new or different address for an Aggrieved Employee that was obtained by
17 the Settlement Administrator as a result of a Notice Return.

18 21. "Released Claims" means any and all claims, rights, demands, liabilities and causes of action
19 for civil penalties under the PAGA that arose during the PAGA Period, based on the factual
20 allegations pled in the operative complaint in the Lawsuit, with respect to the following claims:
21 (a) failure to pay minimum wage (*Labor Code* §§ 200, 206, 216, 218.6, 221, 226, 500, 510,
22 1182.12, 1194, 1194.2, 1197, 1197.1 and 1199); (b) failure to compensate for all hours worked
23 (*Labor Code* §§ 200, 204, 226, 226.8, 432.5, 450, 500, 510, 1194, 1194.2, 1197 and 1198); (c)
24 failure to pay overtime compensation (*Labor Code* §§ 200, 226, 500, 510, 558, 1194 and 1198);
25 (d) failure to provide meal periods and pay meal period compensation (*Labor Code* §§ 226.7
26 and 512); (e) failure to authorize and permit rest periods and pay rest period compensation
27 (*Labor Code* §§ 226.7 and 558.2); (f) failure to furnish accurate wage statements (*Labor Code*
28 §§ 226, 226.3, 1174, 1174.5 and 558.1); (g) failure to timely pay final wages upon discharge

(Labor Code §§ 201, 203, 256 and 558.1); (h) statutory penalties (Labor Code §§ 201, 201.5, 202, 203, 205.5 and 558); (i) failure to indemnify and illegal deductions from wages (Labor Code §§ 200, 203, 226 and 2802); (j) violation of Labor Code § 1198.5, (k) violation of Labor Code § 226(c)(f), (l) violation of the Private Attorneys General Action of 2004, Labor Code § 2698, *et seq.*; (m) unfair competition, Business and Professions Code § 17200, *et seq.*, including any related claims for attorneys' fees, penalties, costs, or interest resulting therefrom. ("Claims") The Released Claims shall specifically include all civil penalties or other amounts which are or may be available under or through the PAGA based on the facts that were alleged in the operative complaint filed in the Lawsuit, and/or predicated any of the Labor Code violations asserted in the operative complaint filed in the Lawsuit, inclusive of all Representative Aggrieved Employees' and the Aggrieved Employees' attorneys' fees and costs. As to the foregoing claims, Representative Plaintiff and Aggrieved Employees release PAGA civil penalties recoverable under any theory of liability upon which such civil penalties under the PAGA could have been recovered based upon the allegations in the operative complaint filed in the Lawsuit.

22. "Released Persons" means Defendants and its respective agents, attorneys, insurers, past, present and future divisions, affiliates, any DBAs, predecessors, successors, shareholders, officers, directors, managers, employees, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, privies, and/or any and all persons and/or corporate entities acting by, through, under or in concert with any of them.

23. "Representative Plaintiff" or "Plaintiff" means Lazaro Ayala and his respective representative(s), heir(s), assign(s), attorney(s) and/or insurer(s).

24. "Representative Plaintiff Enhancement Payment" means an amount of One Thousand Dollars (\$1,000.00) to be paid to Plaintiff, in addition to his Settlement Payment.

25. "Settlement to Plaintiff" means an amount of Thirty-Five Thousand Dollars and No Cents (\$35,000.00) to be paid to Plaintiff in exchange for the Personal Release.

26. "Settlement Administration Costs" means the fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement

1 including, but not limited to: (i) fees and costs associated with preparing, issuing and/or
2 monitoring reports, filings and notices (including the cost of printing, verifying addresses
3 through a United States Postal Service national change of address database (which provides
4 updated addresses for any individual who has moved in the previous four years who has
5 notified the U.S. Postal Service of a forwarding address) to obtain current address information,
6 skip tracing, and mailing all notices and other documents to the Aggrieved Employees)
7 required to be prepared in the course of administering the Settlement; (ii) computing the
8 amount of the Settlement Payments, taxes, and any other payments to be made under this
9 Agreement; (iii) handling inquiries about the calculation of individual Settlement Payments or
10 mailings; (iv) establishing and operating a physical Settlement payment center address, and
11 phone number to receive Aggrieved Employees' inquiries about the Settlement; (v) remitting
12 any tax deductions or subtractions applicable under the law and/or pursuant to this Agreement
13 and preparing and submitting any filings required by any governmental taxing authority or
14 other governmental agency and/or Defendants' worker's compensation insurer; and (vi)
15 establishing a Qualified Settlement Fund. Settlement Administration Costs will not exceed One
16 Thousand Eight Hundred Seventy Five Dollars and Cents (\$1,875.00).

17 27. "Settlement Administrator" refers to Phoenix Settlement Administrators, or any other entity
18 that Aggrieved Employees' Counsel and Defense Counsel select to administer this Settlement
19 and to act as the administrator to process the Settlement under the terms of this Agreement.

20 28. "Settlement Payment(s)" refers to the payment(s) to any Aggrieved Employee pursuant to the
21 terms of this Agreement.

22 29. "Settlement and Release Period" means from August 16, 2019 through the date the Court enters
23 the order granting final approval of the PAGA settlement.

24
25 **WHEREAS**, on or about August 6, 2020, Plaintiff by and through Plaintiff's counsel, sent a
26 notice to the California Labor Workforce Development Agency ("LWDA") and all Defendants (the
27 "PAGA Notice") alleging that Defendants engaged in violations of the California Labor Code and
28

1 California Wage Orders, seeking civil penalties pursuant to the California Labor Code Private
2 Attorneys' General Act ("PAGA");

3 **WHEREAS**, on or about November 19, 2020, Plaintiff filed a Complaint in the California
4 Superior Court for the County of Los Angeles entitled Lazaro Ayala v. Pacific Vista Landscape
5 Services, Inc., et al. (the "Action") alleging individual employment claims;

6 **WHEREAS**, this Settlement is entered into on November 24, 2021 by and between Plaintiff,
7 on behalf of themselves and "Aggrieved Employees" (defined below), on the one hand, and defendants
8 Pacific Vista Landscape Services, Inc., Dana Marie Schneider and James Paul Habeger on the other
9 hand, to memorialize the essential terms of the settlement of Plaintiff's representative claims asserted
10 in the Action.

11 **WHEREAS**, on or about November 19, 2020, Plaintiff filed a Complaint, alleging the
12 following causes of action: (1) Failure to Pay Minimum Wage; (2) Failure to Compensate for All
13 Hours Worked (3) Failure to Pay Overtime Compensation; (4) Failure To Pay Meal Period
14 Compensation; (5) Failure To Rest Period Compensation; (6) Failure To Furnish Accurate Wage and
15 Hour Statements; (7) Failure to Pay Wages Upon Discharge; (8) Statutory Penalties; (9) Violation of
16 the Private Attorneys General Act of 2004; and (10) Unfair Competition;

17 **WHEREAS**, for purposes of Plaintiff representative claims under PAGA, and for purposes of
18 the Action (as defined below) and this PAGA Agreement, the alleged aggrieved individuals
19 ("Aggrieved Employees") are defined by Plaintiff to be current and former exempt and non-exempt
20 employees, who worked at least one pay period for Defendants during the PAGA Period. The PAGA
21 Period is defined to be from August 16, 2019 through the date this Court approves the settlement
22 described herein (the "PAGA Settlement") and enters judgment pursuant to the terms of the PAGA
23 Settlement (the "Approval Date");

24 **WHEREAS**, Defendants vigorously dispute and deny the allegations and various causes of
25 action asserted in the Action, including, without limitation, Plaintiff's individual claims and the
26 Aggrieved Employees' claim for civil penalties pursuant to PAGA;

27 **WHEREAS**, the Parties engaged in an informal exchange of documents and information
28 including Defendants' financial records. The Parties have also conducted extensive independent

1 investigation and evaluations of the claims and defenses in this matter. Both Plaintiff's counsel and
2 Defendants' counsel have significant experience litigating and resolving the type of wage-and-hour
3 claims alleged in the Action, including claims for civil penalties under PAGA;

4 **WHEREAS**, according to the PAGA Settlement Agreement, Plaintiff's "PAGA Claims" are
5 defined as any and all claims for civil penalties pursuant to PAGA based on the allegations in
6 Plaintiff's Complaints and/or PAGA Notices, broadly construed, including, but not limited to, civil
7 penalties based on or arising from California Labor Code Sections 98.6, 200, 201, 201.5, 202, 203,
8 204, 205.5, 206, 206.5, 208, 210, 215, 216, 218.5, 221, 223, 224, 225.5, 226, 226(a)(1), 226(a)(5),
9 226(a)(8), 226(a)(9), 226(c), 226(e)(1), 226(f), 226.3, 226.6, 226.7, 226.8, 227.3, 233 *et seq.*, 246,
10 247, 432.5, 450, 500, 510, 512, 512(a), 551, 552, 553, 558, 558(a)(3), 558.1, 1102.5, 1174, 1174.5,
11 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1198.5, 1198.5(k), 1199, 1776, 2698 *et seq.*,
12 2699.3(c)(1), 2699(i), 2802 and 2810.5 *et seq.*, California Code of Civil Procedure Section 1021.5,
13 3294, California Constitution Article I § 8, Government Code Section 12926.1, 12940 *et seq.*,
14 12940(h) *et seq.*, 12940(m), 12940(n), 12945.2, 12945.2(c)(3)(C), 12965(b), 12965(c) California
15 Business and Professions Code Section 17200 *et seq.*, and the California Wage Orders, whether known
16 or unknown, suspected or unsuspected, concealed or hidden, that were alleged in the Action and/or
17 the PAGA Notice, or that could have been alleged in the Action and/or PAGA Notices, which Plaintiff
18 and any Aggrieved Employee have or had at any time through and including the Approval Date,
19 against any of the Releasees identified in the PAGA Settlement Agreement. A true and correct copy
20 of the PAGA Settlement Agreement is attached hereto as Exhibit A, and its defined terms are hereby
21 incorporated by reference;

22 **WHEREAS**, California Labor Code Section 2699(l)(2) requires that this Court review and
23 approve any settlement pursuant to PAGA;

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

1 **WHEREAS**, based on their own independent investigations and evaluations, the Parties and
2 their respective counsel are of the opinion that the settlement of the PAGA Claims on the terms set
3 forth in the PAGA Settlement Agreement are fair, reasonable and adequate and is in the best interests
4 of the Parties, the LWDA, and Aggrieved Employees in light of all known facts and circumstances
5 and the risks inherent in litigation. Such submission will also include a Notice of Class Settlement.

6 However, if the settlement fails to be approved or otherwise fails to be consummated for any
7 reason whatsoever, including but not limited to the Order not becoming final, then Defendants retain
8 all rights previously available to it, and any provisional approval of the settlement, or the adoption of
9 any procedure herein, shall be undone and the parties restored to their pre-settlement status as if no
10 settlement had been reached and no decisions were made pursuant to it, except as otherwise expressly
11 provided herein. In that event, nothing in this Agreement or other papers or proceedings related to the
12 settlement shall be used as evidence or argument by any party or Aggrieved Employee.

13 **WHEREAS**, the parties agree to cooperate fully with each other to accomplish the terms and
14 requirements of this Agreement, including but not limited to, the execution of such documents and
15 taking such other Lawsuit as may reasonably be necessary to implement the terms of this stipulated
16 settlement. Except as otherwise provided herein, neither party nor any of their attorneys or agents shall
17 initiate any communication with any Aggrieved Employees for the purpose of discouraging them to
18 participate in the settlement unless agreed upon by the other party in writing or if authorized by the
19 Court. This provision in no way limits Aggrieved Employees' Counsel from communicating with the
20 Representative Plaintiff.

21 **WHEREAS**, the Parties recognize that this Court may, pursuant to California Labor Code
22 Section 2699(e)(2), award a lesser amount than the maximum civil penalty amount permitted under
23 PAGA if, based on the facts and circumstances of the particular case, to do otherwise would result in
24 an award that is unjust, arbitrary and oppressive, or confiscatory;

25 **WHEREAS**, the Parties have provided a copy of this Joint Stipulation and the proposed PAGA
26 Settlement Agreement to the LWDA in accordance with Labor Code Section 2699(1)(2), and a proof
27 of service to the LWDA is attached hereto;
28

1 **WHEREAS**, the Parties have agreed upon a “Notice to Aggrieved Employees”, to accompany
2 settlement payments to aggrieved employees, attached hereto as Exhibit B;

3 At the approval hearing, the Representative Plaintiff, Aggrieved Employees’ shall ask the
4 Court to give approval to this Settlement and the settlement contained herein, and Defendants shall
5 make no objection.

6 **WHEREAS**, in consideration of the terms and conditions set forth in the PAGA Settlement
7 Agreement, the Parties agree to be bound to the terms and conditions set forth in the PAGA Settlement
8 Agreement, including that:

9 Defendants shall pay the total sum of Seventy-Five Thousand Dollars and No Cents
10 (\$75,000.00), non-reversionary (the “PAGA Settlement Sum”) to settle this Lawsuit. Defendants shall
11 pay in three (3) equal installments of \$25,000 in contingent on the Court’s approval of the PAGA
12 Settlement; the first installment within 30 days of the Approval Date; the second installment within
13 60 days of the Approval Date; the third installment within 90 days of the Approval Date. Under no
14 circumstances will Defendants be required to pay more than the PAGA Settlement Sum. Payment shall
15 be tendered to the Settlement Administrator. The parties agree that *California Civil Procedure Code*
16 section 384 is not applicable since this is not a class action.

17 A. Thirty-Five Thousand Dollars and No Cents (\$35,000.00) of the PAGA
18 Settlement Sum shall be paid to Plaintiff in exchange for a Personal Release (as defined herein).
19 \$2,000.00 of Plaintiff’s payment for his share of the PAGA Settlement Sum shall be allocated to
20 wages. Plaintiff shall be responsible for his own attorneys’ fees and costs. Plaintiff estimates the total
21 costs of this case to date at \$5,700.00;

22 B. Plaintiff will be responsible for 46.50% of those total costs (approximately
23 \$2,650.00), which is proportionate to his individual settlement portion of the Settlement. This will
24 leave approximately \$3,050.00 (53.50%) in costs to be allocated from the PGSA. Payment of the
25 Individual Settlement Amount shall be made via checks delivered to Plaintiff’s counsel \$2,000.00 of
26 Plaintiff’s net recovery from the Individual Settlement Amount shall be paid on a W2 basis payable
27 to Plaintiff and the remainder shall be paid on a 1099 basis and made payable to Plaintiff’s Counsel’s
28 Attorney Client Trust Account.

1 The remaining balance after deducting the amount being paid to Plaintiff, \$40,000.00
2 (the "PAGA Gross Settlement Amount or "PGSA") and Aggrieved Employees' Counsel will request,
3 and Defendants will not oppose:

4 i. Thirteen Thousand Three Hundred Thirty-Three Dollars and Thirty-
5 Three Cents (\$13,333.33) as Aggrieved Employees' Counsel Fees;

6 ii. An amount not to exceed Three Thousand and Fifty Dollars (\$3,050.00)
7 for recovery of Aggrieved Employees' Counsel Costs;

8 iii. One Thousand Dollars (\$1,000) for Representative Plaintiff
9 Enhancement Payment; and

10 iv. An amount not to exceed One Thousand Eight Hundred and Seventy-
11 Five Dollars (\$1,875.00) for Settlement Administration Costs.

12 After the foregoing disbursements are made, the remainder of the PGSA after
13 disbursing the above items herein shall be designated as PAGA penalties (the "PAGA Penalty Fund").
14 The PAGA Penalty Fund shall be no less than Twenty Thousand Seven Hundred and Forty One
15 Dollars and Sixty Seven Cents (\$20,741.67), with

16 i. no less than Fifteen Thousand Five Hundred and Fifty Six Dollars and
17 Twenty-Five Cents (\$15,556.25) paid to LWDA representing 75% of the PAGA Penalty Fund; and

18 ii. no less than Five Thousand One Hundred and Eighty-Five Dollars and
19 Forty-Two Cents (\$5,185.42) paid to the Aggrieved Employees (the "Distributable Amount")
20 representing 25% of the PAGA Penalty Fund.

21 No funds will revert to Defendants from the PGSA. Defendants shall bear its own attorneys'
22 fees and costs of every kind incurred in connection with the Lawsuit and the negotiation of the
23 settlement of this Lawsuit.

24 Representative Plaintiff and Aggrieved Employees' Counsel will request, and Defendants
25 agree not to oppose: (a) a payment from the PGSA of Thirteen Thousand Three Hundred Thirty-Three
26 Dollars and Thirty-Three Cents (\$13,333.33) for Aggrieved Employees' Counsel Fees; (b) a payment
27 in an amount not to exceed Three Thousand and Fifty Dollars (\$3,050.00) for Aggrieved Employees'
28 Counsel Costs; and (c) Representative Plaintiff Enhancement Payment in the amount of One Thousand

1 Dollars (\$1,000.00). Aggrieved Employees' Counsel believes, and Defendants does not challenge, that
2 such an award to Aggrieved Employees' Counsel and Representative Plaintiff is reasonable.
3 Aggrieved Employees' Counsel Fees and Costs, and Representative Plaintiff Enhancement Payment,
4 whether they are awarded as requested or reduced by the Court, shall be paid from the PGSA.
5 Additionally, up to One Thousand Eight Hundred Seventy Five Dollars (\$1,875.00) shall be paid from
6 the PGSA for Settlement Administration Costs.

7 Within two (2) business days following the Effective Date, the Settlement Administrator shall
8 provide to Defendants complete wiring instructions, including without limitation, the name of the
9 account, name of the bank, routing number and bank account number. Defendants shall pay the Gross
10 Settlement Amount to the Settlement Administrator in three (3) equal installments of \$25,000 in
11 contingent on the court's approval of the PAGA Settlement.

- 12 A. First installment within 30 days of the court's approval of the PAGA Settlement
- 13 B. Second installment within 60 days of the court's approval of the PAGA Settlement
- 14 C. Third installment within 90 days of the court's approval of the PAGA Settlement

15 Defendants shall be deemed to have fully met its payment obligations upon payment to the
16 Settlement Administrator and shall assume no responsibility for the security or distribution of
17 settlement funds following payment to the Settlement Administrator. Aggrieved Employees' Counsel
18 shall timely provide a completed IRS Form W-9 no later than five (5) days after the Effective Date
19 and any other information needed for the Settlement Administrator to make payments. Any payment
20 obligation by any party shall be tolled until the correct information is provided as required by any
21 party. Settlement Administrator shall prepare, file and send IRS Form 1099s for Settlement Payments
22 made to Aggrieved Employees and for all other payments issued out of the Gross Settlement Amount.
23 Under no circumstances shall Defendants be required to pay more than the Gross Settlement Amount.
24 The amounts paid under this Agreement shall not be credited toward or otherwise taken into
25 consideration for purposes of any of Defendants or the Released Persons' benefit plans, including any
26 profit-sharing plans or bonus plans, to which any Aggrieved Employee is eligible to participate.
27 Rather, it is the parties' intention that this Agreement will not affect any rights or amounts to which
28 any Aggrieved Employee may be entitled under any benefit plans.

1 **WHEREAS**, Plaintiff agrees that counsel for Plaintiff will notify the LWDA of the settlement
2 at the same time the settlement is submitted to the court for approval, seek approval of the settlement,
3 and perform any and all statutory tasks as required by law.

4 **WHEREAS**, the Parties further agree that should the Court deny approval of the settlement
5 based on the allocation of the PGSA (the “PAGA Gross Settlement Amount”) or PNSA, the Parties
6 agree to re-negotiate in good faith in an effort to obtain approval of the settlement.

7 **WHEREAS**, “QSF” shall mean the Qualified Settlement Fund established by the Settlement
8 Administrator for the benefit of the Aggrieved Employees and from which the Settlement Payments
9 shall be paid. If practical, the QSF shall be an interest-bearing account at a federally-insured bank that
10 is mutually acceptable to the parties and the Settlement Administrator. The parties agree that the QSF
11 is intended to be a “Qualified Settlement Fund” under Section 468B of the Code and Treas. Reg.
12 Section 1.468B-1, 26 CFR Section 1.468B-1, et seq., and will be administered by the Settlement
13 Administrator as such. With respect to the QSF, the Settlement Administrator shall: (1) open and
14 administer a in such a manner as to qualify and maintain the qualification of the QSF as a “Qualified
15 Settlement Fund” under Section 468B of the Code and Treas. Reg. Section 1.468B-1; (2) satisfy all
16 federal, state and local and income and other tax reporting, return, and filing requirements with respect
17 to Pacific Vista and the QSF and any interest or other income earned by the QSF; and (3) satisfy out
18 of the QSF all (i) taxes (including any estimated taxes, interest or penalties) with respect to the interest
19 or other income earned by the QSF, and (ii) fees, expenses and costs incurred in connection with the
20 opening and administration of the QSF and the performance of its duties and functions as described in
21 this Agreement. The aforementioned taxes, fees, costs and expenses shall be treated as, and included
22 in, the costs of administering the QSF and as Settlement Administration Costs. The Settlement
23 Administrator shall provide copies to Defendants of any federal, state and local income or other tax
24 reporting, return and filing prepared on Defendants behalf. The parties agree to cooperate with the
25 Settlement Administrator and one another to the extent reasonably necessary to carry out the
26 provisions of this Section.

27 The Settlement Administrator shall provide, as appropriate, an IRS Form 1099 to each
28 Aggrieved Employee, Lazaro Ayala, and Aggrieved Employees’ Counsel.

1 Plaintiff's counsel to provide executed W9 Forms from Plaintiff and Plaintiff's counsel and an
2 executed W4 from Plaintiff.

3 **WHEREAS**, it is the desire of the Representative Plaintiff, Aggrieved Employees, and
4 Defendants to fully, finally, and forever settle, compromise, and discharge disputes and claims arising
5 from or related to this Lawsuit. Upon the final approval by the Court of this Settlement and by
6 operation of the Agreement's terms, and except as to such rights or claims as may be created by this
7 Settlement, all Aggrieved Employees fully release and discharge the Released Persons from all
8 Released Claims, whether known or unknown during the Settlement and Release Period. Any
9 Aggrieved Employee covered by this Settlement will be barred from proceeding with any Claim
10 released by this Settlement. As part of the Settlement, Representative Plaintiff Lazaro Ayala grants
11 Defendants and the Released Persons the Personal Release, in exchange for the consideration
12 contained herein.

13 Aggrieved Employees' Counsel designates Phoenix Settlement Administrators, an
14 experienced Settlement Administrator, to process and administer this Settlement. Defendants does not
15 object to this designation. The actions of the Settlement Administrator shall be governed by the terms
16 of this Agreement. In the event that either Counsel for Defendants or the Aggrieved Employees'
17 Counsel take the position that the Settlement Administrator is not acting in accordance with the terms
18 of the Agreement, such party shall meet and confer first with opposing counsel and then, if necessary,
19 with the Settlement Administrator and/or the Court. The Settlement Administrator will administer the
20 settlement, including, but not limited to, ascertaining best addresses through United States Postal
21 Service national change of address databases and skip-tracing, re-mailing notices as required,
22 distributing the Notice of Settlement and Settlement Payments and handling inquiries about the
23 calculation of individual Settlement Payments to the Aggrieved Employees pursuant to the terms
24 contained in this Agreement. The Settlement Administrator shall establish a physical settlement
25 payment center address, telephone number, and facsimile number to receive and timely process
26 Aggrieved Employees' inquiries about the Notice of Settlement, and process the payments to the
27 Aggrieved Employees under the terms of this Agreement. The Settlement Administrator shall maintain
28 proof of mailing for the Notice of Settlement Payment and Settlement Payments and provide copies

1 of these documents to counsel for Defendants upon reasonable notice. The Settlement Administrator
2 is not to destroy either proof of mailing or communications between the Settlement Administrator and
3 any individual who is sent a Notice of Settlement and Settlement Payment without first receiving
4 written confirmation from Defense Counsel authorizing them to do so. The expiration date of the
5 settlement checks will be one hundred and eighty (180) days from the date that the settlement checks
6 are mailed. The amount of any settlement checks that are returned as undeliverable or not cashed by
7 Aggrieved Employees within one hundred and eighty (180) days of the date of the mailing of the
8 settlement checks shall be tendered to the State Controller's Office under the Unclaimed Property
9 Statutes.

10 **WHEREAS**, the Settlement Administrator shall not disburse the settlement funds except as
11 provided herein, as ordered by the Court, or as agreed upon, in writing, by Counsel for Defendants
12 and Aggrieved Employees' Counsel. Subject to further orders and/or directions as may be made by
13 the Court, the Settlement Administrator is authorized to execute such transactions on behalf of the
14 Aggrieved Employees as are consistent with the terms of this Settlement.

15 Defendants will provide as soon as practicable, but no later than thirty (30) calendar days after
16 the Court grants approval of the settlement, the Settlement Administrator with information maintained
17 by Defendants in the normal course of its business operations concerning the Aggrieved Employees'
18 names, last known addresses, last known telephone numbers, and social security numbers, which will
19 be used to send the Notice of Settlement and Settlement Payment to the Aggrieved Employees. Data
20 provided by Defendants shall be kept confidential by the Settlement Administrator except for purposes
21 of administering the settlement and this data shall not be provided to Plaintiff's counsel for any reason.
22 Using this list, the Settlement Administrator shall, within twenty (20) days of receipt from Defendants
23 of the list, mail the Notice of Settlement and Settlement Payments via First-Class mail using the United
24 States Postal Service to the most recent address known for each Aggrieved Employee. Before mailing
25 the Notice of Settlement and Settlement Payments, the Settlement Administrator shall review the
26 national change of address registry for all Aggrieved Employees and/or skip trace to determine the
27 most up-to-date addresses of all Aggrieved Employees. If any Notices of Settlement are returned with
28

1 a forwarding address, the Settlement Administrator will re-mail the Notice of Settlement and
2 Settlement Payment to the Aggrieved Employee whose notice was returned.

3 Within ten (10) days of receipt of Defendants' payment of the Gross Settlement Amount, the
4 Settlement Administrator shall cause to be issued checks to all Aggrieved Employees and the LWDA
5 under this Agreement. Payment to any Aggrieved Employee will be in the form of a check issued for
6 an amount calculated using the formulas contained in this Agreement. Funds from any settlement
7 checks remaining un-cashed after one hundred eighty (180) calendar days after being issued shall be
8 distributed to the Aggrieved Employees in the same manner as provided above. Aggrieved Employees
9 will be bound by all the terms of this Settlement, regardless of whether that Aggrieved Employee
10 receives and cashes his or her check for Settlement Payment.

11 In the event that prior to the final date for any Aggrieved Employee to cash the Settlement
12 Payment, any notice mailed to the Aggrieved Employee is returned as having been undelivered by the
13 U.S. Postal Service, the Settlement Administrator shall, via skip-tracing, seek an address correction
14 from such Aggrieved Employee(s), and send a Redirected Notice to the new or different address within
15 seven days. The Settlement Administrator may conduct any investigation it deems reasonable and
16 consistent with its role and industry practice to determine the correct address of any Aggrieved
17 Employee.

18 As soon as practicable, the Settlement Administrator shall provide Aggrieved Employees'
19 Counsel and Counsel for Defendants a declaration attesting to completion of the notice and payment
20 process set forth above, including an explanation of efforts to resend Notice Returns, and a summary
21 of claims paid, and checks cashed and uncashed, which if requested by the Court, shall be filed by
22 Aggrieved Employees' Counsel. Compliance with the procedures described above shall constitute due
23 and sufficient notice to Aggrieved Employees of this settlement, shall satisfy the requirements of due
24 process, and nothing else shall be required of the Representative Plaintiff, Aggrieved Employees'
25 Counsel, Defendants, Counsel for Defendants, or the Settlement Administrator to provide additional
26 notice of the settlement, unless expressly ordered by the Court.

27 **WHEREAS**, each party to this Settlement acknowledges and agrees that (1) no provision of
28 this Settlement, and no written communication or disclosure between or among the parties or their

1 attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure
2 constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury
3 Department Circular 230 (31 CFR Part 10, as amended); (2) the party (a) has relied exclusively upon
4 his, her or its own independent legal and tax advisers for advice (including tax advice) in connection
5 with this Settlement, (b) has not entered into this Settlement based upon the recommendation of any
6 other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
7 communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty
8 that may be imposed on the party; and (3) no attorney or adviser to any other party has imposed any
9 limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless
10 of whether such limitation is legally binding) upon disclosure by the party of the tax treatment or tax
11 structure of any transactions, including any transactions contemplated by this Settlement.

12 **WHEREAS**, the Parties agree that neither the acceptance nor the performance by Defendants
13 of the terms contained in this Settlement or any of the related negotiations or proceedings is or shall
14 be claimed to be, construed as, or deemed a precedent or an admission by Defendants and/or the
15 Released Persons of the truth of any allegations in the Lawsuit, any violation of any federal, state or
16 local law, ordinance or regulation, any violation of any policy or procedure, or of any liability or
17 wrongdoing whatsoever.

18 **WHEREAS**, the Parties to this PAGA Settlement are represented by competent counsel, and
19 they have had an opportunity to consult with counsel. The Parties to this PAGA Settlement agree that
20 it reflects their good faith compromise of the claims raised in the Action, based upon their assessment
21 of the mutual risks and costs of further litigation and the assessments of their respective counsel.

22 **WHEREAS**, the Parties agree that the terms of this Settlement (including, but not limited to,
23 the settlement amount), the negotiations leading to the execution of the Settlement and the Settlement
24 itself shall not be discussed with or publicized or promoted to the media (including, without limitation,
25 legal periodicals and publications such as "Jury Verdicts," or disclosure of the Settlement on any web
26 site of Aggrieved Employees' Counsel), or the public at large, without the advance written consent of
27 Defendants. The parties intend this paragraph to prohibit Aggrieved Employees' Counsel from
28 discussing, answering questions about, promoting or publicizing the Settlement, its terms, or the

1 negotiations leading to the Settlement with anyone other than the Court or those individuals necessary
2 to effectuate the terms of the Settlement. Notwithstanding the foregoing, Representative Plaintiff and
3 the Aggrieved Employees' Counsel (1) may tell the public in general only that certain claims "have
4 been resolved by the parties;" and (2) may disclose the terms of the Settlement (a) in appropriate filings
5 with the Court in this case; (b) where required by law (e.g., income tax returns); and (c) to accountants
6 or other tax professionals for the purpose of preparing tax returns. These restrictions shall also apply
7 to the settlement stipulation entered into by the parties. Aggrieved Employees' Counsel may not
8 identify Defendants or the Released Parties on its website.

9 **WHEREAS**, the Parties agree that neither this Settlement or its terms, nor any statements or
10 conduct in the negotiation or drafting of it, shall be admissible, offered or used as evidence by
11 Representative Plaintiff, any Aggrieved Employee, Defendants, or its or their respective counsel, in
12 the Lawsuit or any other proceeding as evidence of liability or wrongdoing by Defendants and/or the
13 Released Persons. This Settlement may be used by Defendants and/or the Released Persons to prove
14 or defend against any claim released herein by any Aggrieved Employee in any judicial, quasi-judicial,
15 administrative or governmental proceeding. This Settlement shall not be subject to collateral attack by
16 any Aggrieved Employee. Such prohibited collateral attacked shall include, but not be limited to,
17 claims that the Aggrieved Employee failed, for any reason, to timely receive his or her Settlement
18 Payment.

19 **WHEREAS**, the Parties intend that this PAGA Settlement shall be fully enforceable and
20 binding upon all Parties, and that it shall be admissible and subject to disclosure in any proceeding to
21 enforce its terms under Code of Civil Procedure section 664.6 and any other applicable statute or law,
22 notwithstanding the mediation confidentiality provisions that otherwise might apply under local,
23 federal and state law.

24 **WHEREAS**, the Parties agree that the terms and provisions of this Settlement may be amended
25 only by a written agreement, which is both (1) signed by the Representative Plaintiff, Aggrieved
26 Employees' Counsel, Defendants, and Counsel for Defendants and (2) approved by the Court.

27 **WHEREAS**, the Parties acknowledge that they are entering into this Settlement as a free and
28 voluntary act without duress or undue pressure or influence of any kind or nature whatsoever and that

1 neither Representative Plaintiff nor Defendants has relied on any promises, representations or
2 warranties regarding the subject matter hereof other than as set forth in this Settlement.

3 The parties hereto represent, covenant, and warrant that they have not, directly or indirectly,
4 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity
5 any portion of any liability, claim, demand, Lawsuit, cause of Lawsuit, attorneys' fees, or rights herein
6 released and discharged except as set forth herein. Representative Plaintiff Lazaro Ayala further
7 represents that he has secured the release of any claim to attorneys' fees or costs by his counsel,
8 including, but not limited to Sirmabekian Law Firm, PC. If any claims are made by any Aggrieved
9 Employee between the start of the Settlement Period and the date in which the Court approves the
10 Settlement outlined in this Settlement, such a claim will be deemed covered and released by the
11 individual Aggrieved Employee making the claim under the terms set forth herein. Any Aggrieved
12 Employee covered by this Settlement will be barred from proceeding with any such claim.

13 **WHEREAS**, should the court not approve this Settlement, the parties shall request leave and
14 shall work jointly to attempt to remedy the PAGA settlement in order to obtain the Court's approval,
15 provided, however, that invalidation of any material portion of this Settlement shall invalidate this
16 Settlement in its entirety unless the parties agree in writing that the remaining provisions shall remain
17 in full force and effect. If the Court for any reason does not approve this Settlement, this Settlement
18 shall be considered null and void and all parties to this settlement shall stand in the same position,
19 without prejudice, as if the settlement had been neither entered into nor filed with the Court.

20 The parties agree to waive appeals; provided, however, that either party may appeal any Order
21 issued by the Court that materially alters the terms of the Settlement.

22 This Court shall retain jurisdiction to enforce the terms of the PAGA Settlement Agreement
23 pursuant to California *Code of Civil Procedure* Section 664.6; and

24 Permanently enjoin and forever bar the Representative Plaintiff, Aggrieved Employees'
25 Counsel, or the Aggrieved Employees from instituting or prosecuting any action against the Released
26 Persons which was resolved as part of the Settlement. The parties agree to the exclusive jurisdiction
27 of the Court to enforce the terms and conditions contained herein.

1 **WHEREAS**, the Parties to this PAGA Settlement agree that the Settlement, and any
2 amendments hereto, may be executed in any number of counterparts, each of which when executed
3 and delivered shall be deemed to be an original and all of which taken together shall constitute one
4 and the same instrument. Signatures obtained via facsimile, e-mail, or copies of signatures, shall be
5 deemed valid as if they were inked originals. This Settlement will become effective on the date when
6 the last person signs and dates it.

7 **NOW THEREFORE**, the Parties jointly request that the Court approve the PAGA Settlement
8 set forth in the PAGA Settlement Agreement and enter judgment accordingly to its terms.

9
10 DATED: December 21, 2021

LEVINSON ARSHONSKY & KURTZ, LLP

11
12 By:



JENNIFER KOMSKY
NATHAN LOWERY
DANIEL MARVIZI
Attorneys for Defendants

13
14
15
16
17 DATED: December 22, 2021

SIRMABEKIAN LAW FIRM PC

18
19
20
21 By:



SARKIS SIRMABEKIAN
Attorney for Plaintiff

EXHIBIT A

Sarkis Sirmabekian [SBN 278588]
SIRMABEKIAN LAW FIRM, PC
 3435 Wilshire Blvd., Suite 1710
 Los Angeles, California 90010
 Telephone: 818.473.5003
 Facsimile: 818.476.5619
 Email: *contact@slawla.com*

Attorney for Plaintiff,
LAZARO AYALA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

LAZARO AYALA, an individual;

Plaintiff,

v.

PACIFIC VISTA LANDSCAPE SERVICES,
 INC., a California limited liability company;
 DANA MARIE SCHNEIDER, an individual;
 JAMES PAUL HABEGER, an individual; and
 DOES 1 through 100, Inclusive,

Defendants.

Case Number: 20STCV40071

ASSIGNED TO THE HONORABLE
 MARK V. MOONEY
 DEPT. 68

**JOINT STIPULATION OF SETTLEMENT
 AND RELEASE**

Date Action Filed: 10/19/2020

Trial Date: 04/11/2022

IT IS HEREBY STIPULATED AND AGREED by and between defendants PACIFIC VISTA LANDSCAPE SERVICES, INC., DANA MARIE SCHNEIDER and JAMES PAUL HABEGER (“Defendants”) and plaintiff Lazaro Ayala (“Plaintiff” or “Representative Plaintiff”) on behalf of himself and each of the other Aggrieved Employees (as defined herein), on the other hand, subject to the approval of the Court pursuant to section 2699(l) of the California *Labor Code*, that the settlement of the Lawsuit (as defined herein) shall be effectuated and subject to the following terms and conditions, which supersedes and replaces all prior settlement agreements, including the short-form settlement agreement signed on August 30, 2021.

1 **I. SUMMARY OF SETTLEMENT TERMS**

2 Under the terms of the Settlement, Defendants will pay the Gross Settlement Amount
3 (“Settlement”) of Seventy-Five Thousand Dollars and No Cents (\$75,000.00), non-reversionary, and
4 inclusive all PAGA civil penalties payable to all Aggrieved Employees and the California Labor &
5 Workforce Development Agency (“LWDA”), Representative Plaintiff Enhancement Payment,
6 attorneys’ fees and costs, and Settlement Administration Costs (as defined herein), in exchange for
7 the full and final settlement and release of any and all claims by Plaintiff and the Aggrieved
8 Employees that were made pursuant to California *Labor Code* §2698 *et seq.* (“PAGA”), based on
9 the facts alleged in the operative Complaint in this Lawsuit or the letter to the Labor Workforce
10 Development Agency, and subject to the terms and conditions outlined in this Settlement (as defined
11 herein).

12 Thirty-Five Thousand Dollars and No Cents (\$35,000.00) of the Gross Settlement Amount
13 shall be paid to Plaintiff in exchange for a Personal Release (as defined herein). The remaining
14 \$40,000.00 will be allocated to the PAGA claims (“PAGA Gross Settlement Amount” or “PGSA”).

15 Plaintiff’s and Aggrieved Employees’ Counsel (each of which as defined herein) will seek,
16 from the PGSA, Counsel Fees (as defined herein) in the amount of Thirteen Thousand Three Hundred
17 Thirty-Three Dollars and Thirty-Three Cents (\$13,333.33), representing one-third of the PGSA. In
18 addition, Aggrieved Employees’ Counsel will also be seeking a recovery of Aggrieved Employees’
19 Counsel Costs (as defined herein) in an amount not to exceed Three Thousand Fifty Dollars and No
20 Cents (\$3,050.00). All Settlement Administration Costs (as defined herein) shall be paid out of the
21 PGSA, in an amount not to exceed One Thousand Eight Hundred and Seventy Five Dollars and No
22 Cents (\$1,875.00). Furthermore, and in exchange for the consideration contained herein,
23 Representative Plaintiff agrees to release any and all claims against Defendants and/or the Released
24 Persons personally, and agrees to execute and/or endorse the Personal Release contained herein. In
25 exchange, the Representative Plaintiff shall be paid the Representative Plaintiff Enhancement
26 Payment (as defined herein) of One Thousand Dollars (\$1,000). There will be no reversion of
27 unclaimed funds to Defendants.

28 The remaining \$20,741.67 (PAGA Net Settlement Amount, or PNSA) shall be disbursed as

1 follows: Fifteen Thousand Five Hundred and Fifty Six Dollars and Twenty-Five Cents (\$15,556.25)
2 will be paid to LWDA representing 75% of PAGA civil penalties “for enforcement of labor laws and
3 education of employers and employees about their rights and responsibilities under [the Labor
4 Code].” *See* Cal. Labor Code § 2699(i). The remaining 25% of PAGA civil penalties will be paid
5 directly to Aggrieved Employees, and will be no less than Five Thousand One Hundred and Eighty-
6 Five Dollars and Forty Two Cents (\$5,185.42). Defendants represents that it has employed no more
7 than 64 persons from the beginning of the PAGA Period through present. The settlement will be
8 administered by Phoenix Settlement Administrators, a third-party administrator.

9 **II. DEFINITIONS**

10 As used in this Stipulation and Settlement Agreement, the following terms shall have the
11 meanings specified below:

- 12 1. “Aggrieved Employee” or “Aggrieved Employees” means all current and former,
13 exempt and non-exempt, employees who worked at least one pay period for Defendants
14 in California at any time during the PAGA Period.
- 15 2. The “PAGA Period” shall be from August 16, 2019 through the date the Court enters the
16 order granting final approval of the PAGA settlement.
- 17 3. “Aggrieved Employees’ Counsel” means Sarkis Sirmabekian, Esq. of Sirmabekian Law
18 Firm, PC.
- 19 4. “Aggrieved Employees’ Counsel Costs” means verified litigation costs in an amount not
20 to exceed \$3,050.00 as approved by the Court.
- 21 5. “Aggrieved Employees’ Counsel Fees” means the amount to be paid, after Court
22 approval, to Aggrieved Employees’ Counsel for all past and future attorneys’ fees
23 incurred by Aggrieved Employees’ Counsel in the Lawsuit on behalf of Representative
24 Plaintiff and the Aggrieved Employees including, but not limited to, future attorneys’ fees
25 incurred in securing final approval of the Settlement in the amount of Thirteen Thousand
26 Three Hundred and Thirty-Three Dollars and Thirty-Three Cents (\$13,333.33),
27 representing one-third of the PGSA.
28

- 1 6. "Agreement" means this Stipulation and Settlement Agreement, including any attached
2 exhibits.
- 3 7. "Complaint" means the operative Complaint filed in the Lawsuit.
- 4 8. "Counsel for Defendants" or "Defense Counsel" means Jennifer Raphael Komsky, Esq.,
5 Nathan T. Lowery, Esq., Daniel D. Marvizi, Esq.
- 6 9. "Court" means the Los Angeles Superior Court, in which the Lawsuit is currently
7 pending, the Honorable Judge Mark V. Mooney presiding. Court shall also mean any
8 other Court that acquires proper jurisdiction of this Lawsuit.
- 9 10. "Distributable Amount" means the amount that is distributable to the Aggrieved
10 Employees, and equals the PGSA less Aggrieved Employees' Counsel Fees, Aggrieved
11 Employees' Counsel Costs, Settlement Administration Costs, Representative Plaintiff
12 Enhancement Payment, and payment to the California Labor & Workforce Development
13 Agency ("LWDA").
- 14 11. "Effective Date" means the later of (a) the date of entry of Order granting approval of this
15 Settlement, if no objection to the Settlement is filed, (b) the date on which the time for all
16 appeals from objections to the Settlement has passed, if one or more objections to the
17 Settlement are filed, and (c) if an appeal is taken, the date on which any reviewing court
18 issues a decision, the time for further appeal has expired, and the trial court has regained
19 jurisdiction.
- 20 12. "Gross Settlement Amount" means the total amount of Seventy-Five Thousand Dollars
21 and No Cents (\$75,000.00), the maximum amount to be paid by Defendants pursuant to
22 the terms of this Agreement, regardless of how the court rules on the first or subsequent
23 motions for approval.
- 24 13. "Lawsuit" means this lawsuit and the operative Complaint in the matter entitled *Lazaro*
25 *Ayala v. Pacific Vista Landscape Services, Inc., et al.*, Case No. 20STCV40071, Los
26 Angeles Superior Court.
- 27 14. "Notice of Settlement" means the form to be prepared and approved by both Counsel for
28 Defendants and Aggrieved Employees' Counsel and sent to the Aggrieved Employees

1 with the Settlement Payments to inform them of the material terms of the Agreement and
2 the Released Claims.

3 15. "Notice Returns" means envelopes containing the Notice of Settlement that were mailed
4 by the Settlement Administrator to Aggrieved Employees but were undelivered and
5 returned to the Settlement Administrator by the United States Postal Service.

6 16. "Order and Judgment" means the order and judgment entered by the Court pursuant to
7 the terms set forth in this Agreement (i) approving finally and fully the terms contained
8 in this Agreement; (ii) permanently enjoining and forever barring from prosecuting any
9 and all Released Claims against Defendants or the Released Persons; (iii) entering a final
10 judgment in the Lawsuit; and (iv) retaining jurisdiction to enforce the terms of this
11 Agreement following approval of the Settlement. Aggrieved Employees' Counsel will
12 submit with its approval motion a proposed Order and Judgment – the form and content
13 of which is agreed to by Counsel for Defendants.

14 17. "Personal Release" means the Representative Plaintiff's irrevocable and unconditional
15 release, acquittal, and discharge of the Released Persons and all persons and/or corporate
16 entities acting by, through, under or in concert with any of them, or any of them, from
17 any and all complaints, claims, liabilities, obligations, promises, agreements,
18 controversies, damages, costs, losses, debts and expenses (including attorneys' fees and
19 costs actually incurred), of any nature whatsoever, including but not limited to the release
20 of any and all claims arising under any of the following, as amended: the National Labor
21 Relations Act ("NLRA"), Title VII of the Civil Rights Act of 1964, Sections 1981 through
22 1988 of Title 42 of the United States Code, the Employee Retirement Income Security
23 Act of 1974 ("ERISA"), the Americans with Disabilities Act of 1990 ("ADA"), the Fair
24 Labor Standards Act ("FLSA"), the Occupational Safety and Health Act ("OSHA"), the
25 Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), the Genetic
26 Information Nondiscrimination Act ("GINA"), the Family and Medical Leave Act
27 ("FMLA"), the Worker Adjustment and Retraining Notification Act ("WARN"), the
28 California Fair Employment and Housing Act ("FEHA"), the Family and Medical Leave

1 Act of 1993 (“FMLA”) and the California Family Rights Act (“CFRA”), the Private
2 Attorneys’ General Act (“PAGA”), the California Worker Adjustment and Retraining
3 Notification Act (“Cal-WARN”), the California Business and Professions Code,
4 including the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, the California
5 Minimum Wage Law, the Equal Pay Law for California, the California Labor Code
6 (including specifically, Section 132a) and California Wage Orders, together with any
7 alleged violation of the United States or any state Constitution, any local, state or federal
8 law, regulation or ordinance, and/or public policy, contract or tort or common-law, any
9 claim for injunctive or declaratory relief any violation of the penal code, and any other
10 claim whether cognizable at law or in equity having any bearing whatsoever on
11 Representative Plaintiff’s application for employment, employment with, or separation
12 of employment from the Released Persons, which Representative Plaintiff ever had, now
13 has, or shall have, from the beginning of time to the date of the Effective Date.

14 18. As to the foregoing claims, Representative Plaintiff expressly waives the benefits of
15 California *Civil Code* §1542. *Civil Code* §1542 provides:

16
17 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT***
18 ***THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT***
19 ***TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***
20 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***
21 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE***
22 ***DEBTOR OR RELEASED PARTY***
23

24 19. “Per Capita Payment” means the amount payable to each Aggrieved Employee on an
25 equal per capita basis.

26 20. “Redirected Notice” means a second Notice of Settlement mailed by the Settlement
27 Administrator to a new or different address for an Aggrieved Employee that was obtained
28 by the Settlement Administrator as a result of a Notice Return.

21. "Released Claims" means any and all claims, rights, demands, liabilities and causes of action for civil penalties under the PAGA that arose during the PAGA Period, based on the factual allegations pled in the operative complaint in the Lawsuit, with respect to the following claims: (a) failure to pay minimum wage (*Labor Code* §§ 200, 206, 216, 218.6, 221, 226, 500, 510, 1182.12, 1194, 1194.2, 1197 , 1197.1 and 1199); (b) failure to compensate for all hours worked (*Labor Code* §§ 200, 204, 226, 226.8, 432.5, 450, 500, 510, 1194, 1194.2, 1197 and 1198); (c) failure to pay overtime compensation (*Labor Code* §§ 200, 226, 500, 510, 558, 1194 and 1198); (d) failure to provide meal periods and pay meal period compensation (*Labor Code* §§ 226.7 and 512); (e) failure to authorize and permit rest periods and pay rest period compensation (*Labor Code* §§ 226.7 and 558.2); (f) failure to furnish accurate wage statements (*Labor Code* §§ 226, 226.3, 1174, 1174.5 and 558.1); (g) failure to timely pay final wages upon discharge (*Labor Code* §§ 201, 203, 256 and 558.1); (h) statutory penalties (*Labor Code* §§ 201, 201.5, 202, 203, 205.5 and 558); (i) failure to indemnify and illegal deductions from wages (*Labor Code* §§ 200, 203, 226 and 2802); (j) violation of *Labor Code* § 1198.5, (k) violation of *Labor Code* § 226(c)(f), (l) violation of the Private Attorneys General Action of 2004, *Labor Code* § 2698, *et seq.*; (m) unfair competition, *Business and Professions Code* § 17200, *et seq.*, including any related claims for attorneys' fees, penalties, costs, or interest resulting therefrom. ("Claims") The Released Claims shall specifically include all civil penalties or other amounts which are or may be available under or through the PAGA based on the facts that were alleged in the operative complaint filed in the Lawsuit, and/or predicated any of the Labor Code violations asserted in the operative complaint filed in the Lawsuit, inclusive of all Representative Aggrieved Employees' and the Aggrieved Employees' attorneys' fees and costs. As to the foregoing claims, Representative Plaintiff and Aggrieved Employees release PAGA civil penalties recoverable under any theory of liability upon which such civil penalties under the PAGA could have been recovered based upon the allegations in the operative complaint filed in the Lawsuit.

1 22. "Released Persons" means Defendants and its respective agents, attorneys, insurers, past,
2 present and future divisions, affiliates, any DBAs, predecessors, successors, shareholders,
3 officers, directors, managers, employees, trustees, representatives, administrators,
4 fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, privies, and/or
5 any and all persons and/or corporate entities acting by, through, under or in concert with
6 any of them.

7 23. "Representative Plaintiff" or "Plaintiff" means Lazaro Ayala and his respective
8 representative(s), heir(s), assign(s), attorney(s) and/or insurer(s).

9 24. "Representative Plaintiff Enhancement Payment" means an amount of One Thousand
10 Dollars (\$1,000.00) to be paid to Plaintiff, in addition to his Settlement Payment.

11 25. "Settlement to Plaintiff" means an amount of Thirty-Five Thousand Dollars and No Cents
12 (\$35,000.00) to be paid to Plaintiff in exchange for the Personal Release.

13 26. "Settlement Administration Costs" means the fees and costs incurred or charged by the
14 Settlement Administrator in connection with the execution of its duties under this
15 Agreement including, but not limited to: (i) fees and costs associated with preparing,
16 issuing and/or monitoring reports, filings and notices (including the cost of printing,
17 verifying addresses through a United States Postal Service national change of address
18 database (which provides updated addresses for any individual who has moved in the
19 previous four years who has notified the U.S. Postal Service of a forwarding address) to
20 obtain current address information, skip tracing, and mailing all notices and other
21 documents to the Aggrieved Employees) required to be prepared in the course of
22 administering the Settlement; (ii) computing the amount of the Settlement Payments,
23 taxes, and any other payments to be made under this Agreement; (iii) handling inquiries
24 about the calculation of individual Settlement Payments or mailings; (iv) establishing and
25 operating a physical Settlement payment center address, and phone number to receive
26 Aggrieved Employees' inquiries about the Settlement; (v) remitting any tax deductions
27 or subtractions applicable under the law and/or pursuant to this Agreement and preparing
28 and submitting any filings required by any governmental taxing authority or other

governmental agency and/or Defendants' worker's compensation insurer; and (vi) establishing a Qualified Settlement Fund. Settlement Administration Costs will not exceed One Thousand Five Hundred Dollars and Cents (\$1,875.00).

27. "Settlement Administrator" refers to Phoenix Settlement Administrators, or any other entity that Aggrieved Employees' Counsel and Defense Counsel select to administer this Settlement and to act as the administrator to process the Settlement under the terms of this Agreement.

28. "Settlement Payment(s)" refers to the payment(s) to any Aggrieved Employee pursuant to the terms of this Agreement.

29. "Settlement and Release Period" means from August 16, 2019 through the date the Court enters the order granting final approval of the PAGA settlement.

III. SETTLEMENT APPROVAL & IMPLEMENTATION PROCEDURE

A. Approval of the Settlement

As soon as practicable, Aggrieved Employees' Counsel will submit this Agreement to the Court for its approval pursuant to section 2699(l) of the California *Labor Code*, as this Agreement is fair, adequate and reasonable. Such submission will also include a Notice of Class Settlement.

However, if the settlement fails to be approved or otherwise fails to be consummated for any reason whatsoever, including but not limited to the Order not becoming final, then Defendants retain all rights previously available to it, and any provisional approval of the settlement, or the adoption of any procedure herein, shall be undone and the parties restored to their pre-settlement status as if no settlement had been reached and no decisions were made pursuant to it, except as otherwise expressly provided herein. In that event, nothing in this Agreement or other papers or proceedings related to the settlement shall be used as evidence or argument by any party or Aggrieved Employee.

B. Cooperation

The parties agree to cooperate fully with each other to accomplish the terms and requirements of this Agreement, including but not limited to, the execution of such documents and taking such other Lawsuit as may reasonably be necessary to implement the terms of this stipulated settlement.

Except as otherwise provided herein, neither party nor any of their attorneys or agents shall

1 initiate any communication with any Aggrieved Employees for the purpose of discouraging them to
2 participate in the settlement unless agreed upon by the other party in writing or if authorized by the
3 Court. This provision in no way limits Aggrieved Employees' Counsel from communicating with
4 the Representative Plaintiff.

5 The parties shall promptly submit this Agreement for approval and determination by the
6 Court. Promptly upon execution of this Agreement, the parties shall apply to the Court to schedule
7 a hearing to determine whether the proposed Settlement should be approved. Both parties shall
8 represent to the Court that the Agreement is fair, reasonable, and adequate as to the Aggrieved
9 Employees, and request Court approval as to form and content of the Notice of Settlement.

10 **C. Approval Hearing**

11 At the approval hearing, the Representative Plaintiff, Aggrieved Employees' shall ask the
12 Court to give approval to this Agreement and the settlement contained herein, and Defendants shall
13 make no objection. Upon granting approval of the settlement contained herein, the Court shall also
14 enter an Order implementing the releases contained in Section V as to Representative Plaintiff and
15 all Aggrieved Employees as well as the personal release contained in the Section VI(E) of this
16 Agreement. The releases contained in Sections V and VI(E) of this Agreement shall enter into effect
17 concurrently with the issuance of the Order granting approval.

18 **D. Notice Of Settlement By Mail**

19 Defendants will provide as soon as practicable, but no later than thirty (30) calendar days
20 after the Court grants approval of the settlement, the Settlement Administrator with information
21 maintained by Defendants in the normal course of its business operations concerning the Aggrieved
22 Employees' names, last known addresses, last known telephone numbers, and social security
23 numbers, which will be used to send the Notice of Settlement and Settlement Payment to the
24 Aggrieved Employees. Data provided by Defendants shall be kept confidential by the Settlement
25 Administrator except for purposes of administering the settlement and this data shall not be provided
26 to Plaintiff's counsel for any reason. Using this list, the Settlement Administrator shall, within
27 twenty (20) days of receipt from Defendants of the list, mail the Notice of Settlement and Settlement
28 Payments via First-Class mail using the United States Postal Service to the most recent address

known for each Aggrieved Employee. Before mailing the Notice of Settlement and Settlement Payments, the Settlement Administrator shall review the national change of address registry for all Aggrieved Employees and/or skip trace to determine the most up-to-date addresses of all Aggrieved Employees. If any Notices of Settlement are returned with a forwarding address, the Settlement Administrator will re-mail the Notice of Settlement and Settlement Payment to the Aggrieved Employee whose notice was returned.

In the event that prior to the final date for any Aggrieved Employee to cash the Settlement Payment, any notice mailed to the Aggrieved Employee is returned as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall, via skip-tracing, seek an address correction from such Aggrieved Employee(s), and send a Redirected Notice to the new or different address within seven days. The Settlement Administrator may conduct any investigation it deems reasonable and consistent with its role and industry practice to determine the correct address of any Aggrieved Employee.

E. Declaration Of Compliance

As soon as practicable, the Settlement Administrator shall provide Aggrieved Employees' Counsel and Counsel for Defendants a declaration attesting to completion of the notice and payment process set forth in this Section (Section III), including an explanation of efforts to resend Notice Returns, and a summary of claims paid, and checks cashed and uncashed, which if requested by the Court, shall be filed by Aggrieved Employees' Counsel.

F. Sufficient Notice

Compliance with the procedures described in this Section (Section III) shall constitute due and sufficient notice to Aggrieved Employees of this settlement, shall satisfy the requirements of due process, and nothing else shall be required of the Representative Plaintiff, Aggrieved Employees' Counsel, Defendants, Counsel for Defendants, or the Settlement Administrator to provide additional notice of the settlement, unless expressly ordered by the Court.

G. Qualified Settlement Fund

"QSF" shall mean the Qualified Settlement Fund established by the Settlement Administrator for the benefit of the Aggrieved Employees and from which the Settlement Payments shall be paid.

1 If practical, the QSF shall be an interest-bearing account at a federally-insured bank that is
2 mutually acceptable to the parties and the Settlement Administrator. The parties agree that the QSF
3 is intended to be a “Qualified Settlement Fund” under Section 468B of the Code and Treas. Reg.
4 Section 1.468B-1, 26 CFR Section 1.468B-1, et seq., and will be administered by the Settlement
5 Administrator as such. With respect to the QSF, the Settlement Administrator shall: (1) open and
6 administer a in such a manner as to qualify and maintain the qualification of the QSF as a “Qualified
7 Settlement Fund” under Section 468B of the Code and Treas. Reg. Section 1.468B-1; (2) satisfy all
8 federal, state and local and income and other tax reporting, return, and filing requirements with
9 respect to Hospepower and the QSF and any interest or other income earned by the QSF; and (3)
10 satisfy out of the QSF all (i) taxes (including any estimated taxes, interest or penalties) with respect
11 to the interest or other income earned by the QSF, and (ii) fees, expenses and costs incurred in
12 connection with the opening and administration of the QSF and the performance of its duties and
13 functions as described in this Agreement. The aforementioned taxes, fees, costs and expenses shall
14 be treated as, and included in, the costs of administering the QSF and as Settlement Administration
15 Costs. The Settlement Administrator shall provide copies to Defendants of any federal, state and
16 local income or other tax reporting, return and filing prepared on Defendants behalf. The parties
17 agree to cooperate with the Settlement Administrator and one another to the extent reasonably
18 necessary to carry out the provisions of this Section.

19 The Settlement Administrator shall provide, as appropriate, an IRS Form 1099 to each
20 Aggrieved Employee, Lazaro Ayala, and Aggrieved Employees’ Counsel.

21 Plaintiff’s counsel to provide executed W9 Forms from Plaintiff and Plaintiff’s counsel and
22 an executed W4 from Plaintiff.

23 **H. Formulas to Determine Payment, Distribution of Funds & Payment of Funds**

24 ***1. General Terms of Settlement***

25 Defendants shall pay Seventy-Five Thousand Dollars and No Cents (\$75,000.00), non-
26 reversionary (the “Gross Settlement Amount”), to settle this Lawsuit, within 30 calendar days of the
27 Effective Date. Under no circumstances will Defendants be required to pay more than the Gross
28 Settlement Amount. Payment shall be tendered to the Settlement Administrator.

1 From the Gross Settlement Amount, Thirty-Five Thousand Dollars and No Cents
2 (\$35,000.00) of the Gross Settlement Amount shall be paid to Plaintiff in exchange for a Personal
3 Release (as defined herein). \$2,000.00 of Plaintiff's payment for his share of the Gross Settlement
4 Amount shall be allocated to wages. Plaintiff shall be responsible for his own attorneys' fees.
5 Plaintiff shall be responsible for his own costs. Plaintiff estimates the total costs of this case to date
6 at \$5,700.00. Plaintiff will be responsible for 46.50% of those total costs (approximately \$2,650.00),
7 which is proportionate to his individual settlement portion of the Settlement. This will leave
8 approximately \$3,050.00 (53.50%) in costs to be allocated from the PGSA. Payment of the Individual
9 Settlement Amount shall be made via checks delivered to Plaintiff's counsel \$2,000.00 of Plaintiff's
10 net recovery from the Individual Settlement Amount shall be paid on a W2 basis payable to Plaintiff
11 and the remainder shall be paid on a 1099 basis and made payable to Plaintiff's Counsel's Attorney
12 Client Trust Account.

13 From the Gross Settlement Amount, the remaining \$40,000.00 will be allocated to the PAGA
14 claims (i.e., the PAGA Gross Settlement Amount or "PGSA") and Aggrieved Employees' Counsel
15 will request, and Defendants will not oppose:

- 16 A. Thirteen Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents
17 (\$13,333.33) as Aggrieved Employees' Counsel Fees;
- 18 B. An amount not to exceed Three Thousand and Fifty Dollars (\$3,050.00) for recovery
19 of Aggrieved Employees' Counsel Costs;
- 20 C. One Thousand Dollars (\$1,000) for Representative Plaintiff Enhancement Payment;
21 and
- 22 D. An amount not to exceed One Thousand Eight Hundred and Seventy-Five Dollars
23 (\$1,875.00) for Settlement Administration Costs.

24 After the foregoing disbursements are made, the remainder of the PGSA after disbursing the
25 items (1)(A)-(1)(D) herein shall be designated as PAGA penalties (the "PAGA Penalty Fund"). The
26 PAGA Penalty Fund shall be no less than Twenty Thousand Seven Hundred and Forty One Dollars
27 and Sixty Seven Cents (\$20,741.67), with (i) no less than Fifteen Thousand Five Hundred and Fifty
28 Six Dollars and Twenty-Five Cents (\$15,556.25) paid to LWDA representing 75% of the PAGA

1 Penalty Fund; and (ii) no less than Five Thousand One Hundred and Eighty-Five Dollars and Forty
2 Two Cents (\$5,185.42) paid to the Aggrieved Employees (the “Distributable Amount”) representing
3 25% of the PAGA Penalty Fund.

4 No funds will revert to Defendants from the PGSA. Defendants shall bear its own attorneys’
5 fees and costs of every kind incurred in connection with the Lawsuit and the negotiation of the
6 settlement of this Lawsuit.

7 ***2. Aggrieved Employees’ Counsel Fees, Aggrieved Employees’ Counsel Costs,***
8 ***Settlement Administration Cost, Representative Plaintiff Enhancement***
9 ***Payment, and Payment of Gross Settlement Amount***

10 Representative Plaintiff and Aggrieved Employees’ Counsel will request, and Defendants
11 agree not to oppose: (a) a payment from the PGSA of Thirteen Thousand Three Hundred Thirty-
12 Three Dollars and Thirty-Three Cents (\$13,333.33) for Aggrieved Employees’ Counsel Fees; (b) a
13 payment in an amount not to exceed One Thousand Five Hundred Dollars (\$3,050.00) for Aggrieved
14 Employees’ Counsel Costs; and (c) Representative Plaintiff Enhancement Payment in the amount of
15 Five Hundred Dollars (\$1,000.00). Aggrieved Employees’ Counsel believes, and Defendants does
16 not challenge, that such an award to Aggrieved Employees’ Counsel and Representative Plaintiff is
17 reasonable. Aggrieved Employees’ Counsel Fees and Costs, and Representative Plaintiff
18 Enhancement Payment, whether they are awarded as requested or reduced by the Court, shall be paid
19 from the PGSA. Additionally, up to One Thousand Five Hundred Dollars (\$1,875.00) shall be paid
20 from the PGSA for Settlement Administration Costs.

21 Within two (2) business days following the Effective Date, the Settlement Administrator shall
22 provide to Defendants complete wiring instructions, including without limitation, the name of the
23 account, name of the bank, routing number and bank account number. Defendants shall pay the Gross
24 Settlement Amount to the Settlement Administrator in three (3) equal installments of \$25,000 in
25 contingent on the court’s approval of the PAGA Settlement.

- 26 A. First installment within 30 days of the court’s approval of the PAGA Settlement
27 B. Second installment within 60 days of the court’s approval of the PAGA Settlement
28 C. Third installment within 90 days of the court’s approval of the PAGA Settlement

1 Defendants shall be deemed to have fully met its payment obligations upon payment to the
2 Settlement Administrator and shall assume no responsibility for the security or distribution of
3 settlement funds following payment to the Settlement Administrator. Aggrieved Employees'
4 Counsel shall timely provide a completed IRS Form W-9 no later than five (5) days after the Effective
5 Date and any other information needed for the Settlement Administrator to make payments. Any
6 payment obligation by any party shall be tolled until the correct information is provided as required
7 by any party. Settlement Administrator shall prepare, file and send IRS Form 1099s for Settlement
8 Payments made to Aggrieved Employees and for all other payments issued out of the Gross
9 Settlement Amount. Under no circumstances shall Defendants be required to pay more than the
10 Gross Settlement Amount. The amounts paid under this Agreement shall not be credited toward or
11 otherwise taken into consideration for purposes of any of Defendants or the Released Persons' benefit
12 plans, including any profit-sharing plans or bonus plans, to which any Aggrieved Employee is
13 eligible to participate. Rather, it is the parties' intention that this Agreement will not affect any rights
14 or amounts to which any Aggrieved Employee may be entitled under any benefit plans.

15 **I. The Settlement Administrator**

16 Aggrieved Employees' Counsel designates Phoenix Settlement Administrators, an
17 experienced Settlement Administrator, to process and administer this Settlement. Defendants does
18 not object to this designation. The actions of the Settlement Administrator shall be governed by the
19 terms of this Agreement. In the event that either Counsel for Defendants or the Aggrieved
20 Employees' Counsel take the position that the Settlement Administrator is not acting in accordance
21 with the terms of the Agreement, such party shall meet and confer first with opposing counsel and
22 then, if necessary, with the Settlement Administrator and/or the Court. The Settlement Administrator
23 will administer the settlement, including, but not limited to, ascertaining best addresses through
24 United States Postal Service national change of address databases and skip-tracing, re-mailing
25 notices as required, distributing the Notice of Settlement and Settlement Payments and handling
26 inquiries about the calculation of individual Settlement Payments to the Aggrieved Employees
27 pursuant to the terms contained in this Agreement. The Settlement Administrator shall establish a
28 physical settlement payment center address, telephone number, and facsimile number to receive and

1 timely process Aggrieved Employees' inquiries about the Notice of Settlement, and process the
2 payments to the Aggrieved Employees under the terms of this Agreement. The Settlement
3 Administrator shall maintain proof of mailing for the Notice of Settlement Payment and Settlement
4 Payments and provide copies of these documents to counsel for Defendants upon reasonable notice.
5 The Settlement Administrator is not to destroy either proof of mailing or communications between
6 the Settlement Administrator and any individual who is sent a Notice of Settlement and Settlement
7 Payment without first receiving written confirmation from Defense Counsel authorizing them to do
8 so. The expiration date of the settlement checks will be one hundred and eighty (180) days from the
9 date that the settlement checks are mailed. The amount of any settlement checks that are returned as
10 undeliverable or not cashed by Aggrieved Employees within one hundred and eighty (180) days of
11 the date of the mailing of the settlement checks shall be tendered to the State Controller's Office
12 under the Unclaimed Property Statutes.

13 The Settlement Administrator shall not disburse the settlement funds except as provided
14 herein, as ordered by the Court, or as agreed upon, in writing, by Counsel for Defendants and
15 Aggrieved Employees' Counsel. Subject to further orders and/or directions as may be made by the
16 Court, the Settlement Administrator is authorized to execute such transactions on behalf of the
17 Aggrieved Employees as are consistent with the terms of this Agreement.

18 **J. Time For Disbursement**

19 Within ten (10) days of receipt of Defendants' payment of the Gross Settlement Amount, the
20 Settlement Administrator shall cause to be issued checks to all Aggrieved Employees and the LWDA
21 under this Agreement. Payment to any Aggrieved Employee will be in the form of a check issued
22 for an amount calculated using the formulas contained in this Agreement. Funds from any settlement
23 checks remaining un-cashed after one hundred eighty (180) calendar days after being issued shall be
24 distributed to the Aggrieved Employees in the same manner as provided in Section III (H)(2).
25 Aggrieved Employees will be bound by all the terms of this Agreement, regardless of whether that
26 Aggrieved Employee receives and cashes his or her check for Settlement Payment.

27 **K. Circular 230 Disclaimer**

28 Each party to this Agreement acknowledges and agrees that (1) no provision of this

1 Agreement, and no written communication or disclosure between or among the parties or their
2 attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure
3 constitute or be construed or be relied upon as, tax advice within the meaning of United States
4 Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the party (a) has relied
5 exclusively upon his, her or its own independent legal and tax advisers for advice (including tax
6 advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the
7 recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled
8 to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid
9 any tax penalty that may be imposed on the party; and (3) no attorney or adviser to any other party
10 has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax
11 strategies (regardless of whether such limitation is legally binding) upon disclosure by the party of
12 the tax treatment or tax structure of any transactions, including any transactions contemplated by this
13 Agreement.

14 **IV. LIMITATIONS ON USE OF THIS SETTLEMENT**

15 **A. No Admission**

16 Neither the acceptance nor the performance by Defendants of the terms contained in this
17 Agreement or any of the related negotiations or proceedings is or shall be claimed to be, construed
18 as, or deemed a precedent or an admission by Defendants and/or the Released Persons of the truth of
19 any allegations in the Lawsuit, any violation of any federal, state or local law, ordinance or
20 regulation, any violation of any policy or procedure, or of any liability or wrongdoing whatsoever.

21 **B. Confidentiality**

22 Representative Plaintiff and Aggrieved Employees' Counsel agree that the terms of this
23 Agreement (including, but not limited to, the settlement amount), the negotiations leading to the
24 execution of the Agreement and the Agreement itself shall not be discussed with or publicized or
25 promoted to the media (including, without limitation, legal periodicals and publications such as "Jury
26 Verdicts," or disclosure of the Agreement on any web site of Aggrieved Employees' Counsel), or
27 the public at large, without the advance written consent of Defendants. The parties intend this
28 paragraph to prohibit Aggrieved Employees' Counsel from discussing, answering questions about,

1 promoting or publicizing the Agreement, its terms, or the negotiations leading to the Agreement with
2 anyone other than the Court or those individuals necessary to effectuate the terms of the Agreement.
3 Notwithstanding the foregoing, Representative Plaintiff and the Aggrieved Employees' Counsel (1)
4 may tell the public in general only that certain claims "have been resolved by the parties;" and
5 (2) may disclose the terms of the Agreement (a) in appropriate filings with the Court in this case; (b)
6 where required by law (e.g., income tax returns); and (c) to accountants or other tax professionals
7 for the purpose of preparing tax returns. These restrictions shall also apply to the settlement
8 stipulation entered into by the parties. Aggrieved Employees' Counsel may not identify Defendants
9 or the Released Parties on its website.

10 **C. Non-Evidentiary Use**

11 Neither this Agreement or its terms, nor any statements or conduct in the negotiation or
12 drafting of it, shall be admissible, offered or used as evidence by Representative Plaintiff, any
13 Aggrieved Employee, Defendants, or its or their respective counsel, in the Lawsuit or any other
14 proceeding as evidence of liability or wrongdoing by Defendants and/or the Released Persons. This
15 Agreement may be used by Defendants and/or the Released Persons to prove or defend against any
16 claim released herein by any Aggrieved Employee in any judicial, quasi-judicial, administrative or
17 governmental proceeding. This Agreement shall not be subject to collateral attack by any Aggrieved
18 Employee. Such prohibited collateral attack shall include, but not be limited to, claims that the
19 Aggrieved Employee failed, for any reason, to timely receive his or her Settlement Payment.

20 **D. Nullification**

21 Should the court not approve this Agreement, the parties shall request leave and shall work
22 jointly to attempt to remedy the PAGA settlement in order to obtain the Court's approval, provided,
23 however, that invalidation of any material portion of this Agreement shall invalidate this Agreement
24 in its entirety unless the parties agree in writing that the remaining provisions shall remain in full
25 force and effect. If the Court for any reason does not approve this Agreement, this Agreement shall
26 be considered null and void and all parties to this settlement shall stand in the same position, without
27 prejudice, as if the settlement had been neither entered into nor filed with the Court.

28 **E. Code of Civil Procedure Section 384 Does Not Apply To The Gross Settlement**

1 **Amount**

2 The parties agree that California *Civil Procedure Code* section 384 is not applicable since
3 this is not a class action.

4 **F. Waiver of Appeals**

5 The parties agree to waive appeals; provided, however, that either party may appeal any Order
6 issued by the Court that materially alters the terms of the Agreement.

7 **V. RELEASE**

8 It is the desire of the Representative Plaintiff, Aggrieved Employees, and Defendants to fully,
9 finally, and forever settle, compromise, and discharge disputes and claims arising from or related to
10 this Lawsuit. Upon the final approval by the Court of this Agreement and by operation of the
11 Agreement's terms, and except as to such rights or claims as may be created by this Agreement, all
12 Aggrieved Employees fully release and discharge the Released Persons from all Released Claims,
13 whether known or unknown during the Settlement and Release Period. Any Aggrieved Employee
14 covered by this Agreement will be barred from proceeding with any Claim released by this
15 Agreement.

16 **VI. MISCELLANEOUS PROVISIONS**

17 **A. Amendments**

18 The terms and provisions of this Agreement may be amended only by a written agreement,
19 which is both (1) signed by the Representative Plaintiff, Aggrieved Employees' Counsel,
20 Defendants, and Counsel for Defendants and (2) approved by the Court.

21 **B. Jurisdiction of the Court to Enforce Terms of Agreement**

22 The parties stipulate and agree that the Court will retain jurisdiction both to enforce the terms
23 of this Agreement following approval of the settlement pursuant to California *Code of Civil*
24 *Procedure* section 664.6 as well as permanently enjoin and forever bar the Representative Plaintiff,
25 Aggrieved Employees' Counsel, or the Aggrieved Employees from instituting or prosecuting any
26 action against the Released Persons which was resolved as part of the Agreement. The parties agree
27 to the exclusive jurisdiction of the Court to enforce the terms and conditions contained herein.

28 **C. No Inducements**

1 Representative Plaintiff and Defendants acknowledge that they are entering into this
2 Agreement as a free and voluntary act without duress or undue pressure or influence of any kind or
3 nature whatsoever and that neither Representative Plaintiff nor Defendants has relied on any
4 promises, representations or warranties regarding the subject matter hereof other than as set forth in
5 this Agreement.

6 **D. No Prior Assignment**

7 The parties hereto represent, covenant, and warrant that they have not, directly or indirectly,
8 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
9 entity any portion of any liability, claim, demand, Lawsuit, cause of Lawsuit, attorneys' fees, or
10 rights herein released and discharged except as set forth herein. Representative Plaintiff Lazaro
11 Ayala further represents that he has secured the release of any claim to attorneys' fees or costs by his
12 counsel, including, but not limited to Sirmabekian Law Firm, PC. If any claims are made by any
13 Aggrieved Employee between the start of the Settlement Period and the date in which the Court
14 approves the Settlement outlined in this Agreement, such a claim will be deemed covered and
15 released by the individual Aggrieved Employee making the claim under the terms set forth herein.
16 Any Aggrieved Employee covered by this Agreement will be barred from proceeding with any such
17 claim.

18 **E. Representative Plaintiff Lazaro Ayala's Personal Release**

19 As part of the Agreement, Representative Plaintiff Lazaro Ayala grants Defendants and the
20 Released Persons the Personal Release, as that term is defined in Section II of this Agreement, in
21 exchange for the consideration contained herein.

22 **F. Counterparts**

23 This Agreement, and any amendments hereto, may be executed in any number of
24 counterparts, each of which when executed and delivered shall be deemed to be an original and all
25 of which taken together shall constitute one and the same instrument. Signatures obtained via
26 facsimile, e-mail, or copies of signatures, shall be deemed valid as if they were inked originals. This
27 Agreement will become effective on the date when the last person signs and dates it.
28

IN WITNESS WHEREOF, the parties hereto execute this Agreement and have caused this Agreement to be executed by their duly authorized representatives.

11/18/2021
Date: November __, 2021

PLAINTIFF & REPRESENTATIVE PLAINTIFF

DocuSigned by:

9AD85AE69B3A4C2

Lazaro Ayala
Personally and as Representative Plaintiff

**DEFENDANT PACIFIC VISTA LANDSCAPE
SERVICES, INC.**

Date: November 24, 2021

DocuSigned by:
Jim Habeger
Pacific Vista Landscape Services, Inc.
EC25077AF0D74B4...

By: _____

Date: November ____, 2021

DEFENDANT DANA MARIE SCHNEIDER

DocuSigned by:

D50877686041444...

Dana Marie Schneider

DEFENDANT JAMES THOMAS HABEGER

DocuSigned by:



Date: November 24, 2021

James Thomas Habeger

ES2507BAF0D74B4...

EXHIBIT B

Re: NOTICE OF SETTLEMENT
Lazaro Ayala v. Pacific Vista Landscape Services, Inc., et al.
Superior Court of California for the County of Los Angeles
Case Number: 20STCV40071

Date: [REDACTED]

SIMID
Name
Address

Dear **Name:**

A settlement was reached between Plaintiff and Defendants in *Lazaro Ayala v. Pacific Vista Landscape Services, Inc., et al.*, filed in the Superior Court of California for the County of Los Angeles (Case Number: 20STCV40071) (the “Action”). On [REDACTED], the Superior Court of California, for the County of Los Angeles issued an Order approving the Settlement, which was brought pursuant to the Private Attorneys General Act of 2004 (“PAGA”). An action under PAGA is an enforcement action, in which an aggrieved employee acts as a private attorney general to collect penalties from employers. In reaching this settlement, Pacific Vista Landscape Services (“Pacific Vista”) made no admission of liability and denied the truth of the allegations in the Complaint. However, to avoid additional expense, inconvenience, and interference with Pacific Vista’s business operations, the parties have concluded that it is in the best interests of the parties to settle.

This settlement affects certain employees and former employees of Pacific Vista. You are receiving this Notice of Settlement because you worked for Pacific Vista and at some point from **May 2011 through June 2020** (“Claims Period”). Pursuant to the Settlement, enclosed is a check for your share of a portion of the civil penalties. This check will remain valid for 180 days from the date of issuance. If you do not cash your check within 180 days of issuance, the funds will be deposited by the Settlement Administrator with the California State Controller to be deposited in the Unclaimed Property Fund in your name. If you are still employed by Pacific Vista, your decision to cash the check will not affect your employment.

Payment of this settlement includes a release of any and all claims pursuant to the California Labor Code § 2698, which were alleged based on the facts in the operative Complaint or notice for the California Labor Workforce Development Agency (“LWDA”) on behalf of Plaintiff and all aggrieved employees during the Claims Period. The release includes all claims, rights, demands, liabilities and causes of action that arose during the period from August 16, 2019 through [date of the final order] (the “PAGA Period”) for civil penalties under the PAGA, based on the allegations pled by Plaintiffs in the Action: (a) failure to pay minimum wage (Labor Code section 1197); (b) failure to compensate for all hours worked (Labor Code section 1198); (c) failure to pay overtime compensation (Labor Code section 1198); (d) failure to pay meal period

compensation (Labor Code section 226.7); (e) failure to rest period compensation (Labor Code section 226.7); (f) failure to furnish accurate wage and hour statements (Labor Code section 226); (g) failure to pay wages upon discharge (Labor Code section 201); (h) statutory penalties (Labor Code section 203 and 558); (i) violation of the California Private Attorneys' General Act of 2004 (Labor Code section 2698, et. seq.); and (j) unfair competition (Business and Professions Code sections 17200), including any related claims for attorneys' fees, costs, penalties or interest resulting there from, during the PAGA Period). This release only waives, and is limited to, the aggrieved employee's rights to collect civil penalties under PAGA (2698 *et seq.*).

If you have any questions, you can contact Phoenix Settlement Administrators, the Settlement Administrator, at 1.XXX.XXX.XXXX.

PROOF OF SERVICE
(§ 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am a citizen of the United States of America; I am over the age of eighteen years and not a party to the within entitled action; my business address is: 3435 Wilshire Boulevard, Suite 1710, Los Angeles, California 90010.

On the below-indicated date, I served the following document:

**STIPULATION BY ALL PARTIES FOR ORDER APPROVING SETTLEMENT
PURSUANT TO CALIFORNIA LABOR CODE PRIVATE ATTORNEYS' GENERAL ACT
AND ENTERING JUDGMENT**

on the interested parties in said action by placing:

___X___ a true and correct copy,

and addressed as set forth on the attached Service List and delivered by one or more of the means set forth below:

☒ **BY ELECTRONIC SERVICE IN LIEU OF SERVICE BY MAIL, EXPRESS MAIL, OVERNIGHT DELIVERY, OR FACSIMILE TRANSMISSION:** In accordance with California Code of Civil Procedure section 1010.6, I caused the document to be sent to the person(s) below at the e-mail address(es) listed below.

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

EXECUTED: December 22, 2021
At Los Angeles, California

Grigor Gregg Sirmabekhian
Grigor Gregg Sirmabekhian

[SERVICE LIST ON FOLLOWING PAGE]

SERVICE LIST

Jennifer Raphael Komsky [SBN 190228] Nathan T. Lowery [SBN 238141] Daniel D. Marvizi [SBN 312795] Levinson Arshonsky & Kurtz, LLP 15303 Ventura Blvd., Suite 1650 Sherman Oaks, California 91403 E-mail: jkomsky@laklawyers.com E-mail: nlowery@laklawyers.com E-mail: dmavizi@laklawyers.com E-mail: aboone@laklawyers.com	<i>Attorneys for Defendants PACIFIC VISTA LANDSCAPE SERVICES, INC., DANA MARIE SCHNEIDER and JAMES PAUL HABEGER</i>
Labor and Workforce Development Agency Department of Industrial Relations LWDA Attn. PAGA Administrator 1515 Clay Street, Ste. 801 Oakland, California 94612	<i>Labor and Workforce Development Agency ("LWDA"): filed/served online at: https://www.dir.ca.gov/Private-Attorneys- General-Act/Private-Attorneys-General- Act.html</i>