

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Matthew K. Moen (SBN 305956)
mmoen@haineslawgroup.com
Susan J. Perez (SBN 329044)
sperez@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

SANTIAGO GUTIERREZ, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

M.M.C.L., INC. dba CALIFORNIA
LANDCARE, a California corporation; and
DOES 1 through 100,

Defendants.

Case No. 30-2021-01182371-CU-OE-CXC

*[Case assigned for all purposes to the Hon.
Randall J. Sherman, Dept. CX105]*

**DECLARATION OF MATTHEW K. MOEN
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: October 28, 2022

Time: 10:00 a.m.

Dept.: CX105

Reservation No.: 73797124

Action Filed: February 2, 2021

Trial Date: None Set

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I, MATTHEW K. MOEN, declare as follows:

1. I am a senior associate with Haines Law Group, APC, and counsel for the named Plaintiff Santiago Gutierrez (“Plaintiff”) in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I received a Bachelor of Arts degree from UCLA in 2011, and a Juris Doctor from Loyola Law School, Los Angeles, in 2015. Both before and during law school, I worked for the law firm of Prindle, Amaro, Goetz, Hillyard, Barnes & Reinholtz LLP (now known as Prindle, Goetz, Barnes & Reinholtz LLP), located in Long Beach, California. Both before and during law school, I also worked for Jill McBride Baxter, Certified Sports Agent and Sports Law Attorney.

3. From January 2016 to December 2017, I worked as an associate at Baltodano & Baltodano LLP, a law firm dedicated exclusively to the practice of Plaintiff-side employment law located in San Luis Obispo, California. After the co-founder and lead litigation attorney at Baltodano & Baltodano LLP, the Honorable Hernaldo J. Baltodano, was appointed to the California judiciary in December 2017, the firm dissolved on December 31, 2017. Since January 1, 2018, I have worked as an associate at my current firm, Haines Law Group, APC.

4. During my time with both Baltodano & Baltodano LLP and Haines Law Group, APC, my practice has been solely devoted to litigating plaintiff-side employment related cases in both state and federal court, including wage and hour class actions arising under the California Labor Code and the Fair Labor Standards Act. I am currently staffed on over fifty (50) active wage and hour class actions in which I am integrally involved in all aspects of the litigation.

5. The following is a non-exhaustive list of the recent wage and hour class actions (that have been granted final approval) in which I have been named as Class Counsel: *Morales v. Ball Horticultural Co.*, Case No. 16CV-0488, San Luis Obispo County Superior Court,

1 Honorable Linda D. Hurst, presiding (approving an hourly rate of \$375 for work performed in
2 2017 and 2018); *Ruvalcaba Quiroz v. Circle M Contractors, Inc.*, Case No. 30-2016-00885065-
3 CU-OE-CXC, Orange County Superior Court, Honorable William D. Claster, presiding;
4 *Armenta, et al., v. California Friends Homes d/b/a Quaker Gardens*, Case No. 30-2016-
5 00883282-CU-OE-CXC, Orange County Superior Court, Honorable Randall J. Sherman,
6 presiding; *Willie Daniel Myers, Jr. v. Jerome's Furniture Warehouse*, Case No. CIVDS
7 1715069, San Bernardino County Superior Court, Honorable Janet M. Frangie, presiding
8 (approving an hourly rate of \$375 for work performed in 2018 and 2019); *Tina Arellano v.*
9 *Williams Sonoma Stores, Inc.*, Case No. BC693760, Los Angeles County Superior Court,
10 Honorable Daniel J. Buckley, presiding (approving an hourly rate of \$375 for work performed
11 in 2018 and 2019); *William Cuellar v. UMA Enterprises, Inc.*, Case No. BC657146, Los
12 Angeles County Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly
13 rate of \$375 for work performed in 2018 and 2019); *Arturo Delgado v. Spears Manufacturing*
14 *Co.*, Case No. BC709665, Los Angeles County Superior Court, Honorable Maren E. Nelson,
15 presiding (approving an hourly rate of \$400 for work performed in 2018, 2019, and 2020);
16 *Abbygail Hernandez v. WirelessPCS CA, LLC*, Case No. BC721326, Los Angeles County
17 Superior Court, Honorable Carolyn B. Kuhl, presiding; *Lucia Kang, et al., v. Extra Space*
18 *Management, Inc.*, Case No. 30-2018-00997364-CU-OE-CXC, Orange County Superior Court,
19 Honorable William Claster, presiding (approving an hourly rate of \$400 for work performed in
20 2018, 2019, and 2020); *Fishback v. Paragon Framing, Inc.*, Case No. CIVDS1906610, San
21 Bernardino County Superior Court, Honorable David Cohn, presiding (approving an hourly rate
22 of \$400 for work performed in 2019 and 2020); *Francisco Garcia v. Searing Industries, Inc.*,
23 Case No. CIVDS1932477, San Bernardino County Superior Court, Honorable David Cohn,
24 presiding (approving an hourly rate of \$400 for work performed in 2019 and 2020); *David*
25 *Hasler, et al. v. Anheuser-Busch, LLC*, Case No. 19STCV00802, Los Angeles County Superior
26 Court, Honorable Daniel J. Buckley, presiding; *Angel Ochoa v. Fonseca Construction, Inc.*,
27 Case No. CIVDS1928625, San Bernardino County Superior Court, Honorable David Cohn,
28 presiding (approving an hourly rate of \$400 for work performed in 2019 to 2021); *William*

1 *Chang v. Avcorp Composite Fabrication, Inc.*, Case No. BC715159, Los Angeles County
2 Superior Court, Honorable Amy D. Hogue, presiding (approving an hourly rate of \$400 for
3 work performed in 2018 to 2021); *David Alvarado, et al. v. J.G. Boswell Company*, Case No.
4 19STCV19033, Los Angeles County Superior Court, Honorable Daniel J. Buckley, presiding
5 (approving an hourly rate of \$400 for work performed in 2019 to 2021); and *Gaudencio Arroyo*
6 *Reynoso, et al. v. Cream of the Crop Ag Service, Inc.*, Case No. VCU278847, Tulare County
7 Superior Court, Honorable Bret D. Hillman, presiding (approving an hourly rate of \$425 for
8 work performed in 2019 to 2022).

9 6. I have also moved to certify, and have received an order certifying, a class action
10 as Class Counsel in the following case: *Staublein v. Wells Fargo Bank, National Association*,
11 Case No. CIVDS1712267, San Bernardino Superior Court, Honorable David Cohn, presiding
12 (certifying a wage statement class).

13 7. In 2020-2022, Thomson Reuters and Los Angeles Magazine recognized me as a
14 Top Young Attorney in Southern California in the annual Rising Star Edition of Super Lawyers.
15 This is an honor awarded to no more than two-and-a-half percent (2.5%) of attorneys under the
16 age of forty in Southern California each year.

17 8. I confirm that I do not have any interest or involvement in the governance or
18 work of the proposed *cy pres* recipient, Girls Inc. of Orange County. Likewise, I am not
19 affiliated with the proposed settlement administrator, Simpluris, Inc.

20 9. As counsel for Plaintiff, I have been closely involved in all aspects of this
21 litigation since its inception and believe that the proposed Settlement is a fair and reasonable
22 result for the Class Members.

23 10. Defendant M.M.C.L., Inc. dba California Landcare (“California Landcare” or
24 “Defendant”) operates a landscaping company specializing in landscape maintenance. Plaintiff
25 was employed by Defendant as a non-exempt employee from approximately August 2019 until
26 approximately March 24, 2020. Plaintiff’s primary job duties included landscaping and
27 maintenance work, such as trimming trees, planting seeds, and uprooting plants and flowers.
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1 Like all Settlement Class members, Plaintiff was subject to Defendant's wage and hour
2 policies and practices.

3 11. On February 2, 2021, Plaintiff filed the initial Complaint in this action, alleging
4 Defendant failed to: (i) pay all overtime wages owed; (ii) pay all minimum wages; (iii) provide
5 all lawful meal periods; (iv) authorize and permit all lawful rest periods; (v) reimburse
6 necessary business expenses; (vi) issue accurate and itemized wage statements; (vii) timely pay
7 all final wages upon separation; and (viii) comply with California's Unfair Competition laws.
8 On April 9, 2021, Plaintiff filed the operative First Amended Complaint ("FAC"), adding a
9 cause of action for civil penalties under PAGA, premised on the same underlying Labor Code
10 violations.

11 12. Shortly after Plaintiff filed this action, Defendant engaged in a *Pick Up Stix*
12 campaign pursuant to *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796, to obtain
13 general releases from putative class members. Therefore, the scope of the Parties' Settlement is
14 with respect to only those putative class members who did not sign a "Release Agreement"
15 with Defendant in connection with its *Pick Up Stix* campaign.

16 13. Plaintiff asserts that, as a result of Defendant's uniform practices, Defendant
17 failed to maintain accurate records of the hours actually worked by Settlement Class members,
18 resulting in unpaid minimum and overtime wages throughout the Class Period. Specifically,
19 Plaintiff alleges that Defendant only paid Plaintiff and other non-exempt employees for an
20 assumed 8-hour shift each workday, even though Plaintiff and other non-exempt employees
21 routinely worked in excess of 8-hours per shift. Plaintiff asserts Defendant required that he and
22 other non-exempt employees report for work prior to the scheduled start time of their shift and
23 immediately start loading trucks and preparing for the workday, and also would generally not
24 release Plaintiff and other non-exempt employees from work until 10 to 30 minutes after the
25 scheduled end of their shifts. Despite Defendant requiring Plaintiff and other non-exempt
26 employees to perform work outside of their scheduled shift times, Plaintiff and other non-
27 exempt employees were not paid for this pre-shift and post-shift work time.

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1 14. In response, Defendant maintains it has properly paid all minimum and
2 overtime wages for all hours worked by the Settlement Class members. Defendant argues it did
3 not direct Plaintiff and other non-exempt employees to conduct off-the-clock work and, in fact,
4 there was no work to be done prior to or after scheduled shift times. As such, Defendant
5 contends that all work was performed while on the clock and accurately recorded, and
6 Plaintiff's claim would fail on the merits. Further, Defendant asserts that this claim is not
7 suitable for class treatment, as it requires individualized inquiries into exactly how much time
8 each employee purportedly worked off-the-clock each day, resulting in an unmanageable series
9 of mini-trials.

10 15. Plaintiff further asserts that Defendant failed to provide Settlement Class
11 members with all timely and lawful meal periods to which they were entitled. Specifically,
12 Defendant routinely provided Plaintiff and other non-exempt employees with late meal periods
13 which commenced at 12:00 p.m., regardless of what time their shifts started. This practice
14 resulted in first meal periods routinely being provided after the completion of the fifth hour of
15 work. Further, Plaintiff contends that Defendant failed to maintain a lawful written meal period
16 policy during the Class Period, an issue which itself is certifiable. Additionally, Plaintiff asserts
17 Defendant mandated that Plaintiff and other non-exempt employees remain at the jobsite for
18 the entire meal period under threat of reprimanded and/or termination, in violation of
19 California law.

20 16. In response, Defendant contends that the Settlement Class members were never
21 required to remain on Defendant's jobsites during meal periods, and were free to come and go
22 as they wished during their duty-free meal periods. Further, Defendant contends that its
23 scheduled meal periods ensured that all employees whose shifts started at or after 7:00 a.m.
24 were provided with a timely meal period, and any late meal periods were the result of
25 employee choice. Defendant, therefore, contends that Plaintiff's meal period claim is not suited
26 for class certification as individual inquiries would be required to assess the reasons why a
27 particular individual recorded a non-compliant meal period or missed a meal period on a
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1 particular shift, and whether a particular individual chose to take an untimely meal period on a
2 particular shift, resulting in a series of mini-trials.

3 17. Plaintiff further alleges that Defendant failed to authorize and permit Settlement
4 Class members to take all lawful rest periods to which they were entitled. Specifically, Plaintiff
5 alleges that Defendant failed to authorize and permit *any* separate rest periods and failed to
6 maintain a written rest period policy. Instead, Plaintiff asserts that Defendant provided only a
7 single, one-hour unpaid meal period to Plaintiff and other non-exempt employees during their
8 work shifts, during which employees were required to remain on Defendant's work premises.
9 Plaintiff alleges that he and other non-exempt employees were not authorized and permitted to
10 take additional rest periods other than the lone unpaid meal period. On occasions when lawful
11 rest periods were not authorized and permitted, Defendant failed to pay rest period premiums
12 as required by Labor Code section 226.7; an issue which itself is certifiable.

13 18. Defendant asserts it has always authorized and permitted all required rest
14 periods for its non-exempt employees. Defendant argues that it maintained lawful rest period
15 practices at all times during the Class Period, including authorizing and permitting two rest
16 periods per workday that exceeded 6.5 hours in length, which were pre-scheduled at 9:30am
17 and 1:30pm, and Plaintiff and other non-exempt employees were authorized and permitted to
18 take all lawful rest periods to which they were entitled. Therefore, Defendant asserts that if
19 employees did not take all lawful rest periods, this was solely the result of employee choice
20 and not reflective of Defendant's policies and practices. Further, Defendants assert that this
21 claim is unmanageable, as it requires individualized inquiries into whether each employee
22 failed to take a lawful rest period and on which days, resulting in an unmanageable series of
23 mini-trials. These manageability concerns are especially present for rest periods, Defendant
24 argues, as rest periods are not required by statute to be recorded.

25 19. Plaintiff further alleges that Defendant failed to reimburse the Settlement Class
26 members for all necessary business expenses incurred, in violation of Labor Code section 2802.
27 Specifically, Plaintiff asserts that Defendant required Plaintiff and other non-exempt
28 employees to purchase and wear hats with the Defendant's logo on it for use during their shifts,

1 as well as requiring Plaintiff and other non-exempt employees to use their personal cell phones
2 to communicate with supervisors during their workday. Despite requiring employees to use
3 their personal cell phones, Defendant did not reimburse Plaintiff and other non-exempt
4 employees for a reasonable portion of their monthly cell phone bills.

5 20. In response, Defendant argues that it maintains a policy to reimburse all
6 reasonable and necessary business expenditures and that, to the extent that any expenses were
7 not reimbursed, it was the result of Defendant's employees failing to submit expense
8 reimbursement requests. Further, Defendant argues that any expenses incurred by the
9 Settlement Class members were minimal given the wide availability of low-cost cellular phone
10 plans. Defendant also maintains that this claim faces similar obstacles towards certification as
11 Plaintiff's other claims, particularly that it would require a series of mini-trials to determine
12 which employees incurred expenses, whether those expenses were reasonable and necessary
13 for the particular job duties of the affected employee, and in which pay periods such expenses
14 were allegedly incurred.

15 21. As a result of Defendant's failure to pay all overtime wages, minimum wages,
16 and meal period and rest period premiums, Plaintiff asserts that Defendant also failed to issue
17 accurate and itemized wage statements and failed to timely pay all final wages at the time of
18 separation. Further, Plaintiff alleges that, for a portion of the Class Period, Defendant issued
19 wage statements to the putative Settlement Class members that failed to include the address of
20 the legal entity that is the employer, in violation of Labor Code section 226(a)(8). As a result of
21 these alleged Labor Code violations, Plaintiff also seeks PAGA civil penalties on behalf of all
22 aggrieved employees.

23 22. In response, Defendant argues that Plaintiff's underlying claims will fail and, as
24 a result, the derivative wage statement, waiting time, and PAGA claims will also fail.
25 Defendant also maintains that Plaintiff cannot show that the wage statement violations were
26 "knowing and intentional," or that the putative class members "suffer[ed] injury" as a result of
27 the alleged violations, as required by Labor Code § 226(e) for the imposition of wage
28 statement penalties. Further, Defendant argues that the wage statements always accurately

1 reflected hours worked and amounts actually paid to employees, and thus Defendant could not
2 be found liable for wage statement penalties. Moreover, Defendant maintains that its good faith
3 defenses to Plaintiff's underlying claims would preclude the recovery of waiting time penalties,
4 which are only available for the "willful" failure to pay wages, and that this Court would
5 exercise its discretion to substantially reduce any PAGA penalties awarded.

6 23. In connection with mediation, Defendant provided Plaintiff with electronic
7 timekeeping and payroll records for approximately 20% of the Settlement Class members
8 spanning the entire Class Period, as well as key policy documents and an anonymized list
9 identifying all putative Settlement Class members and their dates of employment and total bi-
10 weekly pay periods. Plaintiff and his counsel then conducted a comprehensive analysis of the
11 produced data to create a detailed, class-wide exposure model for the claims at issue. On
12 January 5, 2022, the Parties participated in a mediation session with Todd Smith, Esq., during
13 which the Parties exchanged divergent views on Defendant's liability and exposure valuations,
14 their legal positions, and the likelihood of certification of Plaintiff's claims. At the conclusion
15 of mediation, Mr. Smith made a mediator's proposal that the Parties ultimately accepted. Over
16 the following months, the Parties finalized the terms of the proposed Settlement now before the
17 Court for preliminary approval.

18 24. Attached hereto as **Exhibit A** is a true and correct copy of the Parties'
19 Stipulation of Settlement. Attached hereto as **Exhibit B** are true and correct copies of the
20 Notice of Class Action Settlement ("Class Notice") and Notice of Individual Settlement
21 Payment (collectively, "Notice Packet").

22 25. On February 2, 2021, Plaintiff notified the California Labor and Workforce
23 Development Agency ("LWDA") via its online submission portal and Defendant via certified
24 mail of Defendant's alleged Labor Code violations, in compliance with Labor Code sections
25 2698, *et seq.*, and otherwise complied with the Private Attorneys General Act's pre-filing
26 exhaustion requirements. Attached hereto as **Exhibit C** is a true and correct copy of Plaintiff's
27 February 2, 2021 Initial PAGA Notice letter and the LWDA's confirmation of receipt.

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1 26. If the Court preliminarily approves this settlement, Defendant will pay a
2 Maximum Settlement Amount (“MSA”) of \$1,250,000.00. Settlement Class members can be
3 easily identified using Defendant’s employment and payroll records. Defendant’s records
4 indicate that there are approximately 352 Settlement Class members. Based on the estimated
5 Net Settlement Amount, average Individual Settlement Payments are projected to be
6 approximately \$2,194.71, with the lowest possible estimated Individual Settlement Payment of
7 \$20.88 (in the event a Settlement Class member worked only one workweek during the Class
8 Period) and the highest possible estimated Individual Settlement Payment of \$5,157.22 (in the
9 event a Settlement Class member performed worked in every workweek throughout the Class
10 Period).

11 27. At the time of seeking final settlement approval, Plaintiff will apply for an
12 enhancement payment in the amount of \$5,000.00 for his service to the Settlement Class and
13 his general release of all claims. Plaintiff’s requested enhancement payment is intended to
14 recognize the significant time and effort that he expended on behalf of the Settlement Class,
15 including gathering relevant documents for use in the lawsuit and providing copies of his wage
16 statements and other factual information to his attorneys, holding various phone calls with his
17 attorneys to discuss the claims in the lawsuit and Defendant’s practices, assisting his attorneys
18 in preparing for mediation, reviewing and providing input regarding the Settlement in this case,
19 and otherwise assisting his attorneys in moving the case towards resolution, the significant
20 risks Plaintiff undertook by serving as the named plaintiff, and the fact that he agreed to a
21 general release of all claims subject to a waiver of Civil Code § 1542.

22 28. My firm will also apply for an attorneys’ fee award of up to one third of the
23 MSA (currently estimated at \$416,666.67), and up to \$20,000 in reimbursement for actual
24 litigation costs. Plaintiff submits that the requested fee is fair compensation for undertaking
25 complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. My
26 firm has incurred substantial attorneys’ fees conducting pre-filing investigation, analyzing
27 Plaintiff’s claims, conducting legal research and analysis, reviewing class documents and data
28 produced by Defendant, extensively reviewing and evaluating the produced timekeeping and

1 payroll records to build a comprehensive damages model, preparing for and attending
2 mediation, negotiating and drafting the Memorandum of Understanding, long-form Settlement
3 Agreement, and Notice Packet documents, preparing this motion for preliminary approval, and
4 otherwise litigating the case. My firm will also expend future attorney time attending the
5 hearing on this Motion, overseeing the Notice process, drafting the Final Approval Motion and
6 supporting documents, attending the Final Approval hearing, and completing other tasks, such
7 as fielding questions from Settlement Class members.

8 29. My firm carefully vetted the claims at issue, reviewed a representative sampling
9 of Settlement Class member data and all relevant policy documents, and created a
10 comprehensive damages model for Defendant's liability. Although the Parties engaged in
11 substantial informal discovery and information exchange prior to mediation, the Parties had
12 agreed to refrain from engaging in formal written and deposition discovery until after
13 exhausting their settlement efforts at mediation. Absent settlement, the Parties will be required
14 to expend substantial time and resources conducting extensive formal written and deposition
15 discovery. Moreover, Plaintiff has not yet filed for class certification, and thus, absent
16 settlement, the Parties would face the prospect of appeals in the wake of a disputed class
17 certification ruling and/or an adverse summary judgment ruling. Even if Plaintiff succeeded in
18 certifying one or more classes, the Parties would incur considerably more attorneys' fees and
19 costs through a possible decertification motion, trial, and possible appeal.

20 30. At the time of the proposed Settlement, Plaintiff had not filed his motion for
21 class certification. Had the Court certified any claims, Plaintiff anticipated that Defendant
22 would seek decertification. Notably, Defendant has already engaged in a *Pick Up Stix*
23 campaign that significantly reduced the size of the putative class. Therefore, absent the
24 Settlement, there was a serious risk that Plaintiff would be unable to move forward on a class-
25 wide basis.

26 31. Plaintiff estimates that putative Settlement Class members were required to
27 perform work before and after their scheduled shifts for a total of approximately 1.5 hours per
28 pay period during the Class Period. Plaintiff's data analysis determined that the putative

1 Settlement Class members worked an aggregate total of 18,500 pay periods during the Class
2 Period. Accordingly, Plaintiff calculated Defendant's maximum potential exposure for off-the-
3 clock wage violations at approximately \$305,250.00 (1.5 hours * 18,500 pay periods * \$11.00
4 minimum wage). Defendant, however, maintains that it has properly recorded and paid
5 Settlement Class members for all time worked during the Class Period, and argues that Plaintiff
6 and other non-exempt employees were never required to conduct off-the-clock work. Further,
7 Defendant asserts that this claim is unmanageable, as it requires individualized inquiries into
8 whether or not each individual employee performed off-the-clock work on each day during the
9 Class Period, resulting in an unmanageable series of mini-trials. Plaintiff discounted the
10 maximum exposure by 55% for the risk of non-certification, and by an additional 20% for risk
11 of losing on the merits, to arrive at an estimated exposure of \$109,890.00.

12 32. Plaintiff's data analysis revealed that non-exempt employees received an
13 average hourly rate of approximately \$15.26 and worked an aggregate total of approximately
14 173,968 shifts over 5.0 hours during the Class Period. Given Plaintiff's allegations that non-
15 exempt employees were required to remain on the premises during purported meal periods, as
16 well as being required to perform pre-shift work off-the-clock thereby causing Defendant's
17 scheduled 12:00 noon meal periods to be untimely, Plaintiff asserts that a meal period violation
18 occurred in each and every applicable shift. Accordingly, Plaintiff calculated Defendant's
19 liability on this claim at \$2,654,751 (173,968 meal period violations * \$15.26 average
20 premium). In response, Defendant asserts that its non-exempt employees were always clocked
21 in when performing work, and therefore its scheduled meal periods remained timely. Further,
22 Defendant asserts that it never maintained an on-premises meal period policy or practice, and
23 employees were free to come and go as they wished during their duty-free meal periods.
24 Defendant also contends that Plaintiff's meal period claim is not suited for class certification as
25 individual inquiries would be required to assess if a particular individual performed off-the-
26 clock pre-shift work and therefore received an untimely meal period on a particular shift,
27 resulting in a series of mini-trials. Given these defenses, Plaintiff discounted the maximum
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1 exposure by 65% for the risk of non-certification, and by an additional 50% for risk of losing
2 on the merits, to arrive at an estimated exposure of \$464,581.

3 33. Plaintiff's data analysis revealed that non-exempt employees worked an
4 aggregate total of 173,968 shifts in excess of 3.5 hours during the Class Period. By combining
5 purported rest periods into hour long unpaid meal periods, Plaintiff contends that any rest
6 periods purportedly authorized and permitted by Defendant during the Class Period were not
7 legally-compliant. Accordingly, Plaintiff calculated Defendant's liability on this claim at
8 \$2,654,751 (173,968 rest period violations * \$15.26 average premium). But as noted above,
9 Defendant argues it has always authorized and permitted rest periods in accordance with
10 California law, and any failure to take a rest period is a result of individual employee choice,
11 rather than company-wide policies or practices. Further, Defendant asserts that this claim is not
12 amenable to class certification given the individual inquiries required to determine whether and
13 why each employee missed a rest period on any given shift, particularly given that rest periods
14 need not be recorded. Given these defenses, Plaintiff discounted the maximum exposure by
15 75% for the risk of non-certification, and by an additional 45% for risk of losing on the merits,
16 to arrive at an estimated exposure of \$365,028.

17 34. Plaintiff further alleges that Defendant failed to reimburse Settlement Class
18 members for all necessary business expenses incurred, including requiring Settlement Class
19 members to purchase hats with Defendant's logo and use of their personal cell phones for
20 communications with supervisors. Plaintiff calculates Defendant is responsible for \$15.00 per
21 month for each of the 352 Settlement Class members as a reasonable percentage of their
22 respective monthly phone bills in addition to reimbursements of the \$10 cost to purchase
23 Defendant's hat. Therefore, Plaintiff calculates Defendant total exposure for violations of
24 Labor Code section 2802 as follows: \$146,380 ((352 employees * \$10 hats) + (9,524 aggregate
25 months * \$15.00)). In response, Defendant argues that it maintained a lawful reimbursement
26 policy throughout the Class Period, and that Plaintiff's damages calculations were substantially
27 overstated given the wide availability of low-cost cellular phone plans. Defendant also
28 maintains that this claim would require a series of mini-trials to determine which expenses

1 were allegedly incurred in any given pay period and to determine why each employee failed to
2 comply with Defendant's reimbursement policies. Plaintiff therefore discounted the maximum
3 exposure by 35% for the risk of non-certification, and by an additional 35% for risk of losing
4 on the merits, to arrive at an estimated exposure of \$61,846.

5 35. According to the key data points provided by Defendant, approximately 229
6 Settlement Class members are eligible for wage statement penalties, and a total of 7,520 wage
7 statements were issued during the relevant one-year statute of limitations period applicable to
8 this claim. Plaintiff calculated Defendant's maximum possible wage statement exposure as
9 approximately \$740,550 ((229 initial violations * \$50 per pay period) + (7,291 subsequent pay
10 periods * \$100 per pay period)). However, Defendant raises numerous defenses, including that
11 the alleged violations, if any, were not "knowing and intentional," and that Plaintiff could not
12 show that the Settlement Class members "suffer[ed] injury" as a result of any alleged
13 violations. Therefore, Plaintiff discounted the maximum exposure by 35% for the risk of non-
14 certification of the underlying claims and 45% for a risk of being unsuccessful on the merits,
15 including failing to prove the violations were "knowing and intentional," that the Class
16 Members "suffer[ed] injury," for an estimated recovery on this claim of \$264,747.

17 36. Based on data provided by Defendant, approximately 175 Settlement Class
18 members separated their employment during the Class Period. Assuming Plaintiff can prove
19 that each of these employees was owed wages that were not paid at the time of their separation,
20 Plaintiff calculated a maximum exposure of \$640,920.00 ((average waiting time penalty of
21 \$3,662.40 (\$15.26 average hourly rate x 8 hours x 30)). Defendant maintains that waiting time
22 penalties are not appropriate because Plaintiff's claims fail on the merits, and given its good-
23 faith defenses, Plaintiff cannot show that any failure by Defendant to pay all final wages was
24 willful under 8 Cal. Code Regs. § 13520. Thus, Plaintiff discounted this claim by 35% for the
25 risk of non-certification and by an additional 45% for risk of being unsuccessful on the merits
26 or failing to establish willfulness, for an estimated recovery of \$229,129.

27 37. Plaintiff alleges that PAGA civil penalties would be recoverable for each pay
28 period in which he could prove an underlying Labor Code violation. According to Plaintiff's

1 data analysis, the Settlement Class members worked a combined total of 7,520 pay periods
2 during the PAGA liability period in which at least one of Plaintiff's alleged Labor Code
3 violations occurred. Plaintiff therefore calculates Defendant's maximum PAGA exposure at
4 \$752,000 (7,520 pay periods x \$100 per violation). However, these penalties are almost
5 exclusively derivative of the underlying violations that Defendant vigorously disputes, both as
6 to certification and the merits. Plaintiff also recognizes that the Court has discretion to
7 substantially reduce any award of PAGA penalties. Therefore, Plaintiff discounted the
8 maximum figure by 85% for risk of the Court reducing penalties, to arrive at an estimated
9 exposure of \$112,800.00.

10 38. Using these estimated figures, Plaintiff estimated that the potential reasonable
11 recovery for the Settlement Class would be approximately \$1,608,021. Thus, the proposed
12 recovery to the Settlement Class of \$1,250,000.00 represents approximately 77.74% of
13 Plaintiff's reasonably forecasted class-wide recovery, which is well within the range approved
14 by courts as being fair, reasonable and adequate, while also avoiding further expense and risk
15 of proceeding towards class certification and trial.

16 39. Concurrently with the filing of this motion, Plaintiff provided notice of the
17 proposed Settlement, as well as copies of the Motion for Preliminary Approval and all papers
18 filed in support hereof, to the LWDA. Attached hereto as **Exhibit D** are true and correct copies
19 of Plaintiff's Settlement submission and the LWDA's confirmation of receipt.

20 I declare under penalty of perjury under the laws of the United States and the state of
21 California that the foregoing is true and correct. Executed on July 7, 2022, at El Segundo,
22 California.

23 

24 Matthew K. Moen

EXHIBIT A

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Santiago Gutierrez (“Plaintiff” or “Class Representative”), as an individual and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant M.M.C.L., Inc. dba California Landcare (“Defendant”), on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines, Fletcher W. Schmidt, Matthew K. Moen, and Susan J. Perez of Haines Law Group, APC (collectively, “Class Counsel”). Defendant is represented by Ronald W. Novotny and Joshua N. Lange of Atkinson, Andelson, Loya, Ruud & Romo (collectively, “Defense Counsel”).

On February 2, 2021, Plaintiff filed a class action complaint against Defendant in Orange County Superior Court, titled *Santiago Gutierrez v. M.M.C.L., Inc. dba California Landcare*, Case No. 30-2021-01182371-CU-OE-CXC (the “Action”). On April 9, 2021, Plaintiff filed the operative First Amended Complaint, alleging that Defendant: (i) failed to pay all overtime wages; (ii) failed to pay all minimum wages; (iii) failed to provide all lawful meal periods; (iv) failed to authorize and permit all lawful rest periods; (v) failed to reimburse necessary business expenses; (vi) failed to issue accurate itemized wage statements; (vii) failed to timely pay all final wages due upon separation from employment; (viii) failed to comply with California’s Unfair Competition laws; and (ix) is liable for civil penalties under the Private Attorneys General Act, Labor Code § 2968 *et seq.* (“PAGA”).

Given the uncertainty of litigation, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, the Parties agree as follows:

1. **Settlement Class Defined.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the certification of the following Settlement Class:

All current and former non-exempt employees who worked for Defendant in California at any time between February 2, 2017 and October 31, 2021 (the “Class Period”) and who did not sign a “Release Agreement” with Defendant in connection with its *Chindarah v. Pick Up Stix, Inc.* campaign.

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **Release by Settlement Class Members and Plaintiff.** Plaintiff and every member of the Settlement Class (except those who opt out) will fully release and discharge Defendant and its former or present parents, subsidiaries, affiliates, predecessors or successors, agents, employees, officers, directors, and attorneys (collectively, the “Released Parties”), as follows:

A. All Settlement Class members who do not timely opt out will release and discharge the Released Parties from all claims, demands, rights, liabilities and causes of action

that were pled in the operative First Amended Complaint in the Action, or which could have been pled in the operative First Amended Complaint based on the factual allegations therein, including claims for failure to pay overtime and minimum wages, meal period violations, rest period violations, failure to reimburse all necessary business expenses, wage statement penalties, waiting time penalties, and failure to comply with California's Unfair Competition laws, that arose during the Class Period ("Released Claims"). This release shall run from February 2, 2017 until October 31, 2021.

It is understood and acknowledged that all current and former non-exempt employees who worked for Defendant in California at any time between February 2, 2020 through October 31, 2021 (the "PAGA Period"), and who did not sign a "Release Agreement" with Defendant in connection with its *Chindarah v. Pick Up Stix, Inc.* campaign (the "PAGA Aggrieved Employees") will be issued a check for their share of the PAGA Amount, as defined below, regardless of whether they submit a timely Request for Exclusion from the Settlement. All PAGA Aggrieved Employees shall be deemed to have released and discharged Defendant from all PAGA claims that are based on the Labor Code violations pled in the operative First Amended Complaint in the Action or Plaintiff's letter to the California Labor and Workforce Development Agency ("LWDA") dated February 2, 2021, or which could have been pled in the operative First Amended Complaint in the Action based on the factual allegations therein, that arose during the PAGA Period (the "PAGA Released Claims"). This release shall run from February 2, 2020 through October 31, 2021.

- B. In light of Plaintiff's Class Representative Enhancement Payment, Plaintiff agrees to release, as an individual and in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law against Defendant. Plaintiff understands that this release includes unknown claims and that Plaintiff is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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

Nothing contained herein shall constitute a release of any rights or claims that cannot be waived as a matter of law (including but not limited to claims arising under workers' compensation laws). Nor shall anything contained herein be construed to exclude the filing of an administrative charge or complaint with the Equal Employment Opportunity Commission or National Labor Relations Board, or participation in an administrative investigation or proceeding.

The Settlement shall become effective on the date upon which the Court signs an order granting final approval of the Settlement Agreement ("Effective Date").

3. **Maximum Settlement Amount.** As consideration, Defendant agrees to pay a non-reversionary “Maximum Settlement Amount” of One Million Two Hundred Fifty Thousand Dollars and Zero Cents (\$1,250,000.00) in full and complete settlement of the Action, as follows:
- A. The Parties have agreed to engage Simpluris Class Action Settlement Administration (“Simpluris”) as the “Settlement Administrator” to administer this Settlement.
 - B. Defendant will fund the Maximum Settlement Amount within sixty (60) calendar days after the Effective Date, which shall be deposited with the Settlement Administrator and held in an established Qualified Settlement Fund (“QSF”).
 - C. This is a non-reversionary settlement. The Maximum Settlement Amount includes:
 - (1) All payments (including interest) to the Settlement Class members;
 - (2) All costs of the Settlement Administrator which are anticipated to be no greater than \$5,795.00;
 - (3) Up to \$5,000.00 for Plaintiff’s Class Representative Enhancement Payment in recognition for Plaintiff’s contributions to the Action and service to the Settlement Class. In the event that the Court reduces or does not approve the requested Class Representative Enhancement Payment, Plaintiff shall not have the right to revoke the Settlement Agreement for that reason, and the Settlement will remain binding;
 - (4) Up to one-third (33.33%) of the Maximum Settlement Amount in Class Counsel’s attorneys’ fees (currently estimated at \$416,666.67), plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than \$20,000.00. In the event that the Court reduces or does not approve the requested Class Counsel attorneys’ fees or costs, Class Counsel shall not have the right to revoke the Settlement Agreement based on that reason, and the Settlement will remain binding; and
 - (5) Forty Thousand Dollars and Zero Cents (\$40,000.00) of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties, or \$30,000.00, will be payable to the LWDA, and the remaining 25%, or \$10,000.00, will be payable to the PAGA Aggrieved Employees as the “PAGA Amount,” as described below.
 - D. Defendants will not oppose the reasonableness of these requests. Any reduction by the Court of these requests will revert to the Net Settlement Amount for distribution to the Settlement Class members who do not opt-out.

- E. **Employer Payroll Taxes.** The Maximum Settlement Amount does not include the employer's share of payroll taxes, which shall be paid by Defendant separate and apart from, and in addition to, the Maximum Settlement Amount.
 - F. **Escalator Clause.** Defendant represents that there are an estimated 37,000 aggregate workweeks worked by the Settlement Class members during the Class Period. If the actual number of total workweeks worked by the Settlement Class members as reported to the Settlement Administrator following preliminary approval is more than 10% greater than this figure (i.e., if there are 40,700 or more total workweeks), Defendant will increase the Maximum Settlement Amount on a proportional basis (i.e., if there was a 15% increase in workweeks, Defendant would increase the Maximum Settlement Amount by 15%).
4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment ("Individual Settlement Payment") from the Settlement. Individual Settlement Payments will be determined and paid as follows:
- A. The Settlement Administrator shall first deduct from the Maximum Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, the Class Representative Enhancement Payment, the Settlement Administrator's fees and expenses for administration, and the amount of PAGA civil penalties designated as payable to the LWDA. The remaining amount shall be known as the "Net Settlement Amount."
 - B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member's Individual Settlement Payment based on the following formula:
 - i. PAGA Amount: The \$10,000.00 payable to the Settlement Class members as PAGA civil penalties shall be designated as the "PAGA Amount." Each PAGA Aggrieved Employee who was employed by Defendant at any time during the PAGA Period, regardless of whether they timely submit a Request for Exclusion, shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the PAGA Period compared to the aggregate number of workweeks worked by all PAGA Aggrieved Employees during the PAGA Period.
 - ii. Wage Statement Amount: Ten percent (10%) of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each participating Settlement Class member who was employed by Defendant at any time between February 2, 2020 and October 31, 2021, shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period compared to the aggregate number of workweeks worked by all participating Settlement Class members during the aforementioned time period.

- iii. Waiting Time Amount: Five percent (5%) of the Net Settlement Amount shall be designated as the “Waiting Time Amount.” The Waiting Time Amount shall be distributed in equal, pro-rata shares to each participating Settlement Class member who separated their employment from Defendant at any time between February 2, 2018 and October 31, 2021.
 - iv. The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class member’s total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class members during the Class Period.
- C. Within 10 business days following the full funding of the Maximum Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate each Settlement Class member’s Individual Settlement Payment, and will prepare and mail the Individual Settlement Payments to the participating Settlement Class members.
- D. Each Individual Settlement Payment shall be allocated as 20% wages (subject to applicable withholdings), and 80% interest and penalties (not subject to withholdings). The Settlement Administrator will be responsible for issuing to participating Settlement Class members an IRS Form W-2 (for amounts paid as wages) and an IRS Form 1099 (for amounts paid as penalties and interest). Settlement Class members are responsible for their share of the payroll taxes on portions of the Individual Settlement Payments allocated as unpaid wages, which will be deducted from their Individual Settlement Payments.
- E. Defendant shall fully discharge its obligations to the participating Settlement Class members through the mailing of an Individual Settlement Payment, regardless of whether such checks are actually received and/or negotiated by the recipients. Each member of the Settlement Class who receives an Individual Settlement Payment must cash that check within 180 days from the date the Settlement Administrator mails it. Any check that is not negotiated within one hundred eighty (180) days of mailing to a Settlement Class member shall be transferred to Girls Inc. of Orange County, the Parties’ agreed-upon *cy pres* designee.
- F. Neither Plaintiff nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.
5. **Attorneys’ Fees and Costs.** Defendant will not object to Class Counsel’s request for a total award of attorneys’ fees of up to one-third of the Maximum Settlement Amount, which is currently estimated to be \$416,666.67. Additionally, Class Counsel will request an award of actual

costs and expenses as supported by declaration, in an amount not to exceed \$20,000.00 from the Maximum Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator for the fees and costs award approved by the Court.

6. **Class Representative Enhancement Payment.** Defendant will not object to a request for a Class Representative Enhancement Payment in the amount of \$5,000.00 for Plaintiff's time and risk in prosecuting this case, Plaintiff's service to the Settlement Class, and in exchange for Plaintiff's general release of claims. This award will be in addition to Plaintiff's Individual Settlement Payment as a Settlement Class member, and shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

7. **Settlement Administrator.** Defendant agrees to the appointment of Simpluris as Settlement Administrator. Defendant will not object to Plaintiff seeking approval to pay up to \$5,795.00 for the administration services from the Maximum Settlement Amount. The Settlement Administrator shall be responsible for depositing into an account and holding the payment from Defendant comprising the Maximum Settlement Amount, sending Notice Packets in English and Spanish to the Settlement Class members, calculating Individual Settlement Payments and preparing all checks and mailings, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Maximum Settlement Amount only after Individual Settlement Payments have been mailed to all participating Settlement Class members.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for settlement purposes only;
- B. Appointing Paul K. Haines, Fletcher W. Schmidt, Matthew K. Moen, and Susan J. Perez of Haines Law Group, APC as Class Counsel;
- C. Appointing Plaintiff Santiago Gutierrez as Class Representative for the Settlement Class;
- D. Approving Simpluris as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and Notice of Individual Settlement Payment), and directing the mailing of the same; and
- G. Scheduling a Final Approval hearing.

9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within 10 business days of the court signing an order preliminarily approving this Settlement Agreement, Defendant will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, and workweek data for all Settlement Class members to the Settlement Administrator to use to determine the number of workweeks worked by each Settlement Class member during the Class Period (to the extent all such information is available).
- B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Individual Settlement Payment for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline, as defined below, shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within five (5) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have an additional fourteen (14) calendar days after the Response Deadline to opt-out, object, or dispute their Individual Settlement Payment. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline.
- D. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within 60 calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).
 - i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the

Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Class Member's telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon.

- ii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement or opt-out of the Settlement Class, or encourage any Settlement Class member to appeal from the final judgment.
 - iii. PAGA Aggrieved Employees. All PAGA Aggrieved Employees employed by Defendant during the PAGA period shall receive their share of the PAGA Amount and will be deemed to have released the PAGA Released Claims, regardless of whether or not they timely request to be excluded from the Settlement Class.
- E. Objections. Members of the Settlement Class who do not opt-out may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel, as well as file all such objections with the Court) within the Response Deadline. Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any objection must be postmarked no later than the Response Deadline. Any Settlement Class member who wishes to may appear in person or through their own counsel and raise an objection at the Final Approval Hearing.
- F. Notice of Individual Settlement Payment / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Individual Settlement Payment as well as all of the information that was used to calculate the Individual Settlement Payment. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Individual Settlement Payment, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine

the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Settlement Agreement. However, if the Settlement Administrator and the Parties cannot agree on a resolution, the Parties will submit the dispute to the Court for a final determination.

- G. Defendant understands its legal obligation not to retaliate against the Settlement Class members for their participation and/or election to participate in the benefits to be afforded any of them by the Settlement and/or the Action.

10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees and costs, Class Representative Enhancement Payment, settlement administration costs, and payment to the LWDA for its share of civil penalties under PAGA; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

11. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

12. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties or their respective counsel, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

13. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Plaintiff: Fletcher W. Schmidt of Haines Law Group, APC
2155 Campus Drive, Suite 180, El Segundo, CA 90245
fschmidt@haineslawgroup.com

if to Defendant: Ronald W. Novotny of Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Drive, Ste 300, Cerritos, CA 90703
rnovotny@aallrr.com

14. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

17. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

IN WITNESS THEREOF, the Parties to this Settlement Agreement each acknowledge that they have read the foregoing Settlement Agreement, accept and agree to the provisions contained herein, and hereby execute it voluntarily and with full understanding of its consequences.

SANTIAGO GUTIERREZ

Dated: Apr 12, 2022

Santiago Gutierrez, 4/12/2022 19:18 PDT

Santiago Gutierrez, Plaintiff

**M.M.C.L., INC. dba CALIFORNIA
LANDCARE**

Dated: _____

By: _____

Its: _____

APPROVED AS TO FORM:

Dated: April 13, 2022

HAINES LAW GROUP, APC

By: 

Paul K. Haines

Fletcher W. Schmidt

Matthew K. Moen

Attorneys for Plaintiff

Dated: _____

**ATKINSON, ANDELSON, LOYA, RUUD &
ROMO**

By: _____

Ronald W. Novotny

Joshua N. Lange

Attorneys for Defendant

14. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

17. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

IN WITNESS THEREOF, the Parties to this Settlement Agreement each acknowledge that they have read the foregoing Settlement Agreement, accept and agree to the provisions contained herein, and hereby execute it voluntarily and with full understanding of its consequences.

SANTIAGO GUTIERREZ

Dated: _____

Santiago Gutierrez, Plaintiff

**M.M.C.L., INC. dba CALIFORNIA
LANDCARE**

Dated: 4/5/2022

Michael McCabe
By: Michael McCabe
Its: CEO

APPROVED AS TO FORM:

Dated: _____

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Fletcher W. Schmidt
Matthew K. Moen
Attorneys for Plaintiff

Dated: April 6, 2022

**ATKINSON, ANDELSON, LOYA, RUUD &
ROMO**

[Signature]
By: _____
Ronald W. Novotny
Joshua N. Lange
Attorneys for Defendant

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

SANTIAGO GUTIERREZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

M.M.C.L., INC. dba CALIFORNIA LANDCARE, a
California corporation; and DOES 1 through 100,

Defendants.

Case No. 30-2021-01182371-CU-OE-CXC

NOTICE OF CLASS ACTION SETTLEMENT

To: All current and former non-exempt employees who worked for Defendant M.M.C.L., Inc. dba California Landcare (“Defendant”) in California at any time between February 2, 2017 and October 31, 2021 (the “Class Period”) and who did not sign a “Release Agreement” with Defendant in connection with its *Chindarah v. Pick Up Stix, Inc.* campaign. Collectively, these employees will be referred to as “Settlement Class Members.”

**PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this notice?

The Court has granted preliminary approval of a proposed class action settlement (the “Settlement”) in *Santiago Gutierrez v. M.M.C.L., Inc. dba California Landcare*, Orange County Superior Court, Case No. 30-2021-01182371-CU-OE-CXC (the “Lawsuit”). Your rights may be affected by the Settlement, and it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Defendant’s records show that you were employed by Defendant as a non-exempt employee in California between February 2, 2017 and October 31, 2021. The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

Plaintiff Santiago Gutierrez (“Plaintiff”) brought this lawsuit against Defendant, asserting claims on behalf of all Settlement Class Members. Plaintiff is known as the “Class Representative,” and his attorneys, who also represent the interests of all Settlement Class Members, are known as “Class Counsel.”

In the Lawsuit, Plaintiff alleges that Defendant: (1) failed to pay all overtime wages; (2) failed to pay all minimum wages; (3) failed to provide all lawful meal periods; (4) failed to authorize and permit all lawful rest periods; (5) failed to reimburse all necessary business expenditures; (6) failed to issue accurate and itemized wage statements; (7) failed to timely pay all final wages; (8) engaged in unfair competition; and (9) is liable for civil penalties under the Private Attorneys General Act (“PAGA”).

Defendant denies that it has done anything wrong, and denies that it owes Settlement Class Members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendant, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience, and interference with business operations, the parties concluded that it is in the interests of Settlement Class Members and in Defendant's best interest to settle the Lawsuit on the terms summarized in this Notice. After Defendant provided substantial relevant information to Class Counsel, the Settlement was reached after mediation and arms'-length negotiations between the parties with the assistance of a neutral mediator.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the inherent risks of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

If you are still employed by Defendant, your decision about whether to participate in the Settlement will not affect your employment. California law and Defendant's policy strictly prohibit unlawful retaliation. Defendant will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class Member because of his or her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiff / Settlement Class Members:	Attorneys for Defendant:
HAINES LAW GROUP, APC Paul K. Haines (SBN 248226) phaines@haineslawgroup.com Fletcher W. Schmidt (SBN 286462) fschmidt@haineslawgroup.com Matthew K. Moen (SBN 305956) mmoen@haineslawgroup.com Susan J. Perez (SBN 329044) sperez@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com	ATKINSON, ANDELSON, LOYA, RUUD & ROMO, A Professional Law Corporation Ronald W. Novotny, State Bar No. 100041 RNovotny@aalrr.com Joshua N. Lange, State Bar No. 269016 Joshua.Lange@aalrr.com 12800 Center Court Drive South, Suite 300 Cerritos, California 90703-9364 Telephone: (562) 653-3200 Fax: (562) 653-3333

What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a settlement class – for settlement purposes only – of all current and former non-exempt employees who worked for Defendant in California at any time during the Class Period and who did not previously sign a “Release Agreement” with Defendant in connection with its *Chindarah v. Pick Up Stix, Inc.* campaign. Settlement Class Members who do not submit a valid and timely Request for Exclusion from the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Defendant, as described below in the “Release” section.

Defendant has agreed to pay \$1,250,000.00 (the “Maximum Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Settlement Class Members, attorneys’ fees and expenses, settlement administration costs, payment to the California Labor and Workforce Development Agency (“LWDA”) for its share of PAGA civil penalties, and the Class Representative Enhancement Payment. The following deductions from the Maximum Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Simpluris Class Action Settlement Administration to act as the “Settlement Administrator,” who is sending this Notice to you and who will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$5,795.00 from the Maximum Settlement Amount to pay the Settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as

attorneys' fees, which will be paid from the Maximum Settlement Amount. Settlement Class Members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of up to one-third of the Maximum Settlement Amount (which is currently estimated to be \$416,666.67) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$20,000.00 for verified costs which were incurred by Class Counsel in connection with the Lawsuit.

Class Representative Enhancement Payment. Class Counsel will ask the Court to award \$5,000.00 to Plaintiff as a Class Representative Enhancement Payment. This is meant to compensate Plaintiff for his service and extra work provided on behalf of the Settlement Class Members.

PAGA Payment to the State of California. The parties have agreed to allocate \$40,000.00 of the Maximum Settlement Amount as PAGA civil penalties. Per Labor Code Section 2699(i), 75% of such penalties (\$30,000.00) will be payable to the LWDA for its share of PAGA penalties, and the remaining 25% (\$10,000.00) will be payable to the Settlement Class as part of the Net Settlement Amount.

Calculation of Settlement Class Members' Individual Settlement Payments. After deducting the Court-approved amounts above, the balance of the Maximum Settlement Amount will form the Net Settlement Amount, which will be distributed to all Settlement Class Members who do not submit a valid and timely Request for Exclusion (described below). The Net Settlement Amount will be divided as follows:

- (i) PAGA Amount: The \$10,000.00 payable to the Settlement Class Members as PAGA civil penalties shall be designated as the "PAGA Amount." Each Settlement Class Member who was employed by Defendant at any time between February 2, 2020 through October 31, 2021 (the "PAGA Period") and who did not sign a "Release Agreement" with Defendant in connection with its *Chindarah v. Pick Up Stix, Inc.* campaign (the "PAGA Aggrieved Employees"), regardless of whether they timely submit a Request for Exclusion, shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the PAGA Period compared to the aggregate number of workweeks worked by all PAGA Aggrieved Employees during the PAGA Period.
- (ii) Wage Statement Amount: Ten percent (10%) of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each participating Settlement Class Member who was employed by Defendant at any time between February 2, 2020 and October 31, 2021, shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period compared to the aggregate number of workweeks worked by all participating Settlement Class Members during the aforementioned time period.
- (iii) Waiting Time Amount: Five percent (5%) of the Net Settlement Amount shall be designated as the "Waiting Time Amount." The Waiting Time Amount shall be distributed in equal, pro-rata shares to each participating Settlement Class Member who separated their employment from Defendant at any time between February 2, 2018 and October 31, 2021.
- (iv) The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class Member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class Member's total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class Members during the Class Period.

Individual Settlement Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members who did not submit a valid and timely Request for Exclusion. Each participating Settlement Class Member who receives an Individual Settlement Payment must cash that check within 180 calendar days from the date the Settlement Administrator mails it. Any funds payable to participating Settlement Class Members whose checks are not cashed within 180 calendar days after mailing will be transferred by the Settlement Administrator to Girls Inc. of Orange County, the Court-approved *cy pres* designee.

Allocation and Taxes. For tax purposes, each Individual Settlement Payment will be allocated as 80% penalties and interest issued pursuant to an IRS Form 1099; and 20% as wages issued pursuant to an IRS Form W-2, with employee-side payroll withholding taxes withheld. Settlement Class Members are responsible for the proper income tax treatment of the Individual Settlement Payments. The Settlement Administrator, Defendant and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, each Settlement Class Member who has not submitted a timely and valid Request for Exclusion will fully release and discharge Defendant and its former or present parents, subsidiaries, affiliates, predecessors or successors, agents, employees, officers, directors, and attorneys (collectively the “Released Parties”) from all claims, demands, rights, liabilities and causes of action that were pled in the operative First Amended Complaint in the Action, or which could have been pled in the operative First Amended Complaint based on the factual allegations therein, including claims for failure to pay overtime and minimum wages, meal period violations, rest period violations, failure to reimburse all necessary business expenses, wage statement penalties, waiting time penalties, and failure to comply with California’s Unfair Competition laws, that arose during the Class Period (the “Released Claims”). The period of the Release shall run from February 2, 2017 until October 31, 2021, and become effective on the date upon which the Court signs an order granting final approval of the Settlement Agreement.

It is understood and acknowledged that all PAGA Aggrieved Employees, regardless of whether they opt-out of the Settlement, shall be deemed to have released and discharged Defendant from all PAGA claims that are based on the Labor Code violations pled in the operative First Amended Complaint in the Action or Plaintiff’s letter to the California Labor and Workforce Development Agency (“LWDA”) dated February 2, 2021, or which could have been pled in the operative First Amended Complaint in the Action based on the factual allegations therein, that arose during the PAGA Period (the “PAGA Released Claims”). This release shall run from February 2, 2020 through October 31, 2021.

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class Members, and the entry of Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your Individual Settlement Payment, which has been calculated for you based on the formula set forth above, and as stated in the accompanying Notice of Individual Settlement Payment. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Individual Settlement Payment. Your payment is based on the proportionate number of workweeks that you worked during the relevant time periods and whether your employment separated during the relevant time period. The information contained in Defendant’s records regarding this information, along with your estimated Individual Settlement Payment, is listed on the accompanying Notice of Individual Settlement Payment. If you disagree with the information in your Notice of Individual Settlement Payment, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Individual Settlement Payment. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class Members. Should a consensus not be reached, any outstanding disputes will be submitted to the Court for a final determination.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a written “Request for Exclusion from the Class Action Settlement” letter or card postmarked no later than **<<RESPONSE DEADLINE>>**, with your name, address, telephone number, last four digits of your social security number, and your signature. The Request for Exclusion must state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *SANTIAGO GUTIERREZ v. M.M.C.L., INC. dba CALIFORNIA LANDCARE*, LAWSUIT FILED IN THE ORANGE COUNTY SUPERIOR COURT, CASE NO. 30-2021-01182371-CU-OE-CXC. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator at <<ADMINISTRATOR CONTACT INFO>>. Any person who submits a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class Member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may mail a written objection to the Settlement Administrator. Your written objection should include your name, address, last four digits of your social security number, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. All objections or other correspondence must state the name and number of the case, which is *Santiago Gutierrez v. M.M.C.L., Inc., dba California Landcare*, Orange County Superior Court, Case No. 30-2021-01182371-CU-OE-CXC. Objections in writing must be postmarked on or before <<RESPONSE DEADLINE>>.

You may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department CX105 of the Orange County Superior Court, located at 751 W. Santa Ana Blvd., Santa Ana, California 92701. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing, if you wish to appear in person. You have the right to appear either in person or through your own attorney at this hearing, whether or not you submit a written objection. If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object. **PLEASE REVIEW THE INFORMATION BELOW REGARDING THE IMPACT OF COVID-19 ON YOUR ABILITY TO APPEAR IN PERSON AT THE FINAL APPROVAL HEARING.**

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department CX105 of the Orange County Superior Court, located at 751 W. Santa Ana Blvd., Santa Ana, California 92701. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. The Court also will be asked to rule on Class Counsel’s request for attorneys’ fees and reimbursement of documented costs and expenses, the Enhancement Payment to the Class Representative, the Settlement Administrator’s costs, and the amount related to the PAGA civil penalties. **You are not required to attend the Final Approval Hearing. PLEASE REVIEW THE INFORMATION BELOW REGARDING THE IMPACT OF COVID-19 ON YOUR ABILITY TO APPEAR IN PERSON AT THE FINAL APPROVAL HEARING.**

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court’s files and the Settlement Agreement at the Central Justice Center, located at 700 Civic Center Drive West, Santa Ana, California 92701, during regular business hours. You may also contact the Settlement Administrator at <<ADMINISTRATOR CONTACT INFO>>, toll free, or Class Counsel using the contact information listed above for more information. In light of the COVID-19 pandemic, the Orange County Superior Court has implemented certain protocols that may impact your ability to review the Court’s files in person. As of the date of this mailing, you may be required to schedule an in-person counter service prior to accessing the Court’s files. Current information regarding

how to make an appointment, as well as additional rules, regulations, and safety protocols, can be viewed on the Court's website, at www.occourts.org.

**PLEASE DO NOT CALL OR WRITE THE CLERK OF THE COURT OR THE JUDGE FOR INFORMATION
ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS**

Notice Regarding Impact of COVID-19.

In light of the COVID-19 pandemic, the Orange County Superior Court has implemented certain protocols that may impact your ability to review the Court's files in person and/or appear at the Final Approval Hearing in person, should you choose to do so. Current information regarding the Court's COVID-19 rules, regulations, and safety protocols, can be viewed on the Court's website, at www.occourts.org.

Additional information regarding viewing live court proceedings, such as the Final Approval Hearing, or scheduling an in-person counter service appointment can be found here: <https://www.occourts.org/media-relations/CoronaVirusUpdate.html>

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>.

NOTICE OF INDIVIDUAL SETTLEMENT PAYMENT

SANTIAGO GUTIERREZ v. M.M.C.L., INC. dba CALIFORNIA LANDCARE
ORANGE COUNTY SUPERIOR COURT, CASE NO. 30-2021-01182371-CU-OE-CXC

Please complete, sign, date and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the information listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

(III) Information Used to Calculate Your Individual Settlement Payment:

According to Defendant's records:

- (a) You worked _____ workweeks during the Class Period;
- (b) You worked _____ workweeks between February 2, 2020 and October 31, 2021 (the Wage Statement/PAGA Period); and
- (c) Your employment with Defendant <<DID/DID NOT>> end between February 2, 2018 and October 31, 2021 (the Waiting Time Period).

Based on the above, your Individual Settlement Payment is estimated to be \$ _____.

(IV) If you disagree with items (a) - (c) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this form:

If you dispute the above information from Defendant's records, those records will control unless you are able to provide documentation that establishes that Defendant's records are mistaken. If there is a dispute about whether Defendant's information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the Class Notice that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED
NO LATER THAN <<RESPONSE DEADLINE>>.**

Signature: _____

Date: _____

EXHIBIT C

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

February 2, 2021

VIA LWDA WEBSITE

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

Re: *Santiago Gutierrez v. M.M.C.L., Inc. dba California Landcare, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Santiago Gutierrez in claims arising from his employment with M.M.C.L., Inc. dba California Landcare, and Does 1 through 100 (collectively, “Defendants”). Mr. Gutierrez is an “aggrieved employee” within the meaning of Labor Code section 2699.3 as to all of the violations alleged herein. The purpose of this letter is to comply with Labor Code § 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” includes all of Defendants’ current and former non-exempt employees who worked for Defendants in California during the one year immediately preceding the date of this letter through the present.

Defendants operate a landscaping company specializing in landscape maintenance. Mr. Gutierrez was employed by Defendants as a non-exempt employee from approximately August 2019 until approximately March 24, 2020, although he was paid in cash for the first 2 to 3 months of his employment with Defendants, and did not begin to be paid by payroll check until November 3, 2019. Mr. Gutierrez’s primary job duties included landscaping and maintenance work, such as trimming trees, planting seeds, and uprooting plants and flowers.

During Mr. Gutierrez’s employment with Defendants, Defendants maintained no system for recording Mr. Gutierrez’s and other aggrieved employees’ hours worked, and as a result failed to compensate Mr. Gutierrez and other aggrieved employees for all hours actually worked. Specifically, Defendants only paid Mr. Gutierrez and other aggrieved employees for an assumed 8-hour shift, despite the fact that Mr. Gutierrez and other aggrieved employees routinely worked in excess of 8-hours per shift. For example, Mr. Gutierrez was typically scheduled to work from 7:00 a.m. to 3:30 p.m. with a 30-minute unpaid meal period, and was required to report to Defendants’ office location to pick up a company truck. Mr. Gutierrez would generally report to work at approximately 6:50 a.m. and would immediately be put to work by Defendants loading the truck and preparing for the workday. At the end of his shifts, Mr. Gutierrez would generally not be released from

work on time, and would not be able to return the company truck until 10 to 30 minutes after 3:30 p.m. Despite Mr. Gutierrez and other aggrieved employees routinely working in excess of 8-hours per day and at times complaining about not receiving pay for all hours or required overtime compensation, Defendants insisted on paying for only 8-hours per day. As a result of these unlawful timekeeping policies/practices, Defendants failed to properly compensate Mr. Gutierrez and other aggrieved employees for all hours worked, and deprived them of all required minimum and overtime wages earned.

Throughout Mr. Gutierrez's employment, Defendants also failed to provide Mr. Gutierrez and other aggrieved employees with all legally-compliant meal periods. Specifically, Defendants' unlawful meal period policies/practices failed to provide timely, duty-free 30-minute meal periods commencing before the end of the fifth hour of work. Defendants only allowed Mr. Gutierrez and other aggrieved employees to take a single 1-hour meal period, which was often not started by supervisors until after the end of the fifth hour of work. Additionally, Defendants required Mr. Gutierrez and other aggrieved employees to remain at the jobsite for the entire meal period, and Defendants' supervisors reprimanded and/or threatened Mr. Gutierrez and other aggrieved employees with termination if they left the jobsite during meal periods. As a result, Mr. Gutierrez and other aggrieved employees regularly did not receive timely and duty-free first meal periods that commenced prior to the conclusion of the fifth hour of work. On occasions when Mr. Gutierrez and other aggrieved employees were not provided with all lawful meal periods to which they were entitled, Defendants failed to pay Mr. Gutierrez and other aggrieved employees an additional hour of premium pay at their respective regular rates of pay for each workday in which a meal period violation occurred, as required by Labor Code section 226.7. Upon information and belief, Defendants failed to maintain pay codes for the payment of meal period premium payments as required by Labor Code section 226.7.

Defendants' unlawful rest period policies/practices similarly failed to authorize and permit Mr. Gutierrez and other aggrieved employees to take any duty-free 10-minute rest periods for every four hours worked, or major fraction thereof. Rather, Defendants had a policy and/or practice of unlawfully eliminating rest breaks by combining them into the meal period. As discussed above, employees were not permitted to leave the jobsite during meal periods and therefore even assuming that the combined meal and rest periods were otherwise valid rest periods (which they were not), Defendants did not relieve employees of all employer control during rest periods in violation of *Augustus v. ABM Security Svcs., Inc.*, 2 Cal.5th 257, 269 (2016) ("[O]ne cannot square the practice of compelling employees to remain at the ready, **tethered by time and policy to particular locations** or communications devices, with the requirement to relieve employees of all work duties and employer control during 10-minute rest periods.")(emphasis added). Despite Defendants' failure to authorize and permit Mr. Gutierrez and other aggrieved employees to take all legally-compliant rest periods to which they were entitled, Defendants failed to compensate Mr. Gutierrez and other aggrieved employees with an additional hour of premium pay at their respective regular rates of pay for each workday in which a rest period violation occurred, as required by Labor Code § 226.7. Upon information and belief, Defendants

failed to maintain pay codes for the payment of rest period premium payments as required by Labor Code section 226.7.

Additionally, Defendants required Mr. Gutierrez and other aggrieved employees to use their personal cell phones to communicate regularly with supervisors about work. Defendants also required Mr. Gutierrez and other aggrieved employees to purchase a company hat bearing Defendants' logo. Despite requiring Mr. Gutierrez and other aggrieved employees to utilize their personal cell phones for work purposes and to purchase company apparel for work, Defendants failed to reimburse these aggrieved employees for all necessary business expenses associated with using their personal cell phones and purchasing company apparel, in violation of Labor Code section 2802. Upon information and belief, Defendants failed to maintain any policy for reimbursing employees for work-related expenses.

As a result of Defendants' failure to pay all overtime wages, minimum wages, and meal and rest period premium wages owed, Defendants also maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Gutierrez and other aggrieved employees, and failed to pay all final wages owed to Mr. Gutierrez and other aggrieved employees upon their respective separations of employment. Further, Defendants' wage statements are also facially deficient due to a failure to include the address of the legal entity that is the employer, in violation of Labor Code § 226(a).

As described above, Defendants committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 5-2001 ("Wage Order 5"):

Overtime Violations

Defendants were required to properly pay Mr. Gutierrez and other aggrieved employees for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 5. Wage Order 5, § 3 requires an employer to pay an employee "one and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours" per work day and/or in excess of 40 hours of work in the workweek. Wage Order 5, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of twelve hours each work day and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Mr. Gutierrez and other aggrieved employees to work overtime hours but did not compensate Mr. Gutierrez and other aggrieved employees at one and one-half times their regular rate of pay for such hours. Defendants also caused Mr. Gutierrez and other aggrieved employees to work in excess of twelve hours in a workday but did not properly compensate Mr. Gutierrez and other aggrieved employees at double their regular rate of pay for all such hours.

Minimum Wage Violations

Wage Order 5, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state

law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon. Defendants failed to conform their pay practices to the requirements of the law by failing to pay Mr. Gutierrez and other aggrieved employees for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 5.

Meal Period Violations

Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Mr. Gutierrez and other aggrieved employees, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 5, § 11, for the reasons set forth in the factual allegations and class definitions sections of this Complaint. Despite Defendants' violations, Defendants did not pay an additional hour of premium pay to Mr. Gutierrez and other aggrieved employees at their respective regular rates of pay, in accordance with California Labor Code §§ 226.7 and 512.

Rest Period Violations

Wage Order 5, § 12 and Labor Code §§ 226.7 and 516 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof. Due to Defendants' unlawful rest period policies and/or practices, Defendants failed to authorize and permit Mr. Gutierrez and other aggrieved employees to take all paid rest periods to which they were legally entitled. Despite Defendants' violations, Defendants failed to pay an additional hour of premium pay to Mr. Gutierrez and other aggrieved employees at their respective regular rates of pay for each violation, as required by California Labor Code § 226.7.

Failure to Reimburse Necessary Business Expenses

Defendants required Mr. Gutierrez and other aggrieved employees to incur necessary work expenses without reimbursing these employees for such necessary work expenditures, during the four years preceding the filing of this action. Defendants were subject to Labor Code section 2802, which states that "an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." Defendants were subject to Labor Code section 2804, which states that "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

Wage Statement Violations

Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Mr. Gutierrez and other aggrieved employees with accurate and complete itemized wage statements that included, among other requirements, all minimum and overtime wages owed and all meal and rest period premium wages earned, total gross wages earned, total net wages earned, and the address of the employer, in violation of Labor Code § 226. Defendants' failure to furnish Mr. Gutierrez and other aggrieved employees with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all overtime wages owed, all rest period premium wages, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

Waiting Time Penalties

Labor Code §§ 201-203 require an employer to pay all wages earned immediately at the time of separation of employment in the event the employer discharges the employee, or if the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of his/her intent to quit, said employee's wages become due and payable no later than 72 hours upon said employee's last date of employment. Defendants failed to timely pay Mr. Gutierrez and other aggrieved employees all final wages due to them at the time of their separation, which includes, among other things, underpaid overtime wages, and rest period premium wages. Further, as a matter of uniform policy and practice, Defendants continue to fail to pay aggrieved employees all earned wages at the end of employment in a timely manner pursuant to Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Mr. Gutierrez and other aggrieved employees their earned wages upon separation from employment, results in a continued payment of wages up to thirty (30) days from the time the wages were due.

As an "aggrieved employee," Ms. Gutierrez will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Gutierrez's own investigation, and on information and belief, Defendants committed and continue to commit the following Labor Code violations:

- a. Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Gutierrez and other aggrieved employees all overtime compensation earned;
- b. Defendants violated Labor Code §§ 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Gutierrez and aggrieved employees the statutory minimum wage for all hours worked;

- c. Defendants violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Gutierrez and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. Defendants violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to authorize and permit Mr. Gutierrez and other aggrieved employees to take all lawful rest periods to which they are entitled, and failing to pay rest period premiums to Mr. Gutierrez and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;
- e. Defendants violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Gutierrez and other aggrieved employees for all work-related expenses they incurred;
- f. Defendants violated Labor Code § 226 by failing to furnish Mr. Gutierrez and other aggrieved employees with accurate and compliant itemized wage statements;
- g. Defendants violated Labor Code §§ 201-203 by failing to timely pay all final wages due to Mr. Gutierrez and other aggrieved employees;
- h. Defendants violated Labor Code § 204 by failing to pay Mr. Gutierrez and aggrieved employees all wages earned at least twice during each calendar month; and
- i. Defendants violated Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Mr. Gutierrez and aggrieved employees.

Pursuant to Labor Code § 2699.3, please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC



Fletcher W. Schmidt

cc: M.M.C.L., Inc., c/o Karen Anne Dimmick, Agent for Service of Process (via certified mail)

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Jonathan Ramirez](#)
Subject: Thank you for submission of your PAGA Case.
Date: Tuesday, February 02, 2021 5:20:41 PM

2/2/2021

LWDA Case No. LWDA-CM-820512-21
Law Firm : Haines Law Group, APC
Plaintiff Name : Santiago Gutierrez
Employer: M.M.C.L., Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT D