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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

JOSE S. RIVERA, an individual; and
PORFIRIO N. ALVAREZ, an individual,

Plaintiffs,

v.

MIRELES LANDSCAPING INC, a California
Corporation; JOSE ROBERTO MIRELES, an
individual; and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 37-2021-00023588-CU-OE-CTL

**SECOND JOINT EX PARTE NOTICE
AND APPLICATION FOR APPROVAL
OF SETTLEMENT OF PLAINTIFFS'
PRIVATE ATTORNEYS GENERAL
ACT ("PAGA") CLAIM;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
RODOLFO RUIZ-VELASCO**

I/C: Hon. Katherine Bacal
Dept.: C-69

Date: September 7, 2022
Time: 8:45 a.m.

Date of First Paper: May 28, 2021
Trial date: November 4, 2022

[IMAGED FILE]

PLEASE TAKE NOTICE that on September 7, 2022 at 8:45 a.m., or as soon thereafter as
this matter may be heard in Department C-69 of the above-entitled Court, located at 330 West

1 Broadway, San Diego, California, Plaintiffs Jose S. Rivera and Porfirio N. Alvarez (“Plaintiffs”)
2 and Defendants Mireles Landscaping Inc and Jose Roberto Mireles (“Defendants”) (collectively,
3 the “Parties”) will and hereby apply jointly, *ex parte*, for approval of settlement of Plaintiffs’
4 Private Attorneys General Act of 2004 (“PAGA”) claim.
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6 The Parties bring this request on an *ex parte* basis so that the settlement funds can more
7 quickly be distributed and to reduce the attorneys’ fees and costs that could otherwise be
8 consumed in further proceedings in this case.

9 This *ex parte* application is based on this Application, the attached memorandum of
10 points and authorities, the declaration of Rodolfo Ruiz-Velasco, the complete files and records in
11 this action, and any other matters that may be presented to the Court.
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13 Dated: August 26, 2022

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15 Rodolfo Ruiz-Velasco, Esq.
16 Attorneys for Plaintiffs
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION & BACKGROUND**

3 The above referenced wage and hour case has been settled in full in a settlement between
4 Plaintiffs and Defendants after mediation with mediator John Edwards, pending final approval of
5 the Court as it pertains to the seventh cause of action for PAGA penalties. The Parties agree as to
6 the amount and the method of distribution of the PAGA penalties. Based upon the factors set
7 forth below, the amount of the PAGA penalties is reasonable because (1) Defendants dispute the
8 violations, (2) Defendants have cooperated with Plaintiff's investigation in providing the
9 necessary records, (3) Defendants' claimed financial condition and inability to pay a higher
10 amount, which would also impact collecting on a judgment in this case, and (4) the Parties have
11 decided to compromise on the claims to save on fees and costs that would significantly increase
12 upon further litigation. The California Labor Workforce Development Agency ("LWDA") has
13 been served with a copy of these Ex Parte Notice papers (Ruiz-Velasco Decl., filed herewith).

14 This is a second attempt in this case to approve the settlement of the PAGA claim. On or
15 about August 23, 2022, this Court denied the Parties' first Joint Application for Approval of
16 Settlement of the PAGA Claim because the settlement release that the Parties signed was too
17 broad in scope. The Parties have entered into a new release which more clearly specifies the
18 scope of the release of the PAGA claim, and now once again attempt to approve the PAGA claim
19 settlement.

20 The Parties therefore, respectfully request that this Court approve the PAGA settlement as
21 set forth in the proposed order filed concurrently herewith pursuant to Labor Code §2699(1)(2).

22 **II. PAGA CLAIMS CANNOT BE SETTLED WITHOUT COURT APPROVAL**

23 Pursuant to Labor Code Section 2699(1)(2): "The superior court shall review and approve
24 any settlement of any civil action filed pursuant to this part."

25 **III. THE COURT HAS WIDE DISCRETION IN APPROVING PAGA**
26 **PENALTIES THAT ARE BINDING**

27 Pursuant to Labor Code Section 2699(e)(2) the Court has discretion as it pertains to the
28 amount of the penalty and "may award a lesser amount than the maximum civil penalty amount

1 specified by this part if, based on the facts and circumstances of the particular case, to do
2 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.

3 **IV. THE RELEASE OF A PAGA CLAIM SHALL BE LIMITED TO CLAIMS**
4 **THAT ARE REASONABLY RELATED TO THE ALLEGATIONS IN THE COMPLAINT**

5 The Parties in this case have entered into a new settlement agreement releasing the PAGA
6 claim as to all claims that are reasonably related to the allegations in the Complaint in this case,
7 pursuant to *Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal. App. 5th 521, 538 (“Similarly,
8 the release would have been acceptable had it been limited to claims “reasonably related” to the
9 allegations in the complaint rather than “in any way relat[ed].” Requiring a reasonable
10 connection prevents the release from extending to claims that are only remotely related to the
11 allegations in the complaint.”).

12 **V. THE PROPOSED PAGA PENALTIES ARE REASONABLE GIVEN THAT**
13 **DEFENDANTS DISPUTE THE LABOR CODE VIOLATIONS ALLEGED BY**
14 **PLAINTIFFS, DEFENDANTS HAVE COOPERATED WITH PLAINTIFFS’**
15 **INVESTIGATION, DEFENDANTS’ FINANCIAL CONDITION, AND THAT THE**
16 **PARTIES WOULD LIKE TO COMPROMISE TO SAVE ON FEES AND COSTS THAT**
17 **WOULD INCREASE SIGNIFICANTLY UPON FURTHER LITIGATION**

18 “[The] Legislature's purpose in enacting the PAGA was to augment the limited
19 enforcement capability of the Agency by empowering employees to enforce the Labor Code as
20 representatives of the Agency.” *Iskanian*, supra, 59 Cal.4th at 383.

21 Labor Code section 2699 allows for a maximum penalty of one-hundred dollars (\$100)
22 for the first pay period in which there was violation of applicable sections and two-hundred
23 dollars (\$200) per pay check for each pay period thereafter pursuant to subsection (f)(2), “except
24 those for which a civil penalty is specifically provided” pursuant to subsection (f).

25 In the instant action there were five categories of underpayment claimed by Plaintiffs:
26 minimum wage pay violations, overtime wage violations, meal and rest period violations, failure
27 to reimburse, and records violations.

28 ///

1 Labor Code section 2699.3 requires that the representative employee(s) “give written
2 notice by online filing with the Labor and Workforce Development Agency and by certified mail
3 to the employer of the specific provisions of this code alleged to have been violated, including
4 the facts and theories to support the alleged violation.” Labor Code section 2699.3(a)(1)(A).
5 Plaintiffs gave said notice on May 10, 2021. See Decl. of Rodolfo Ruiz-Velasco, ¶2.

6 Plaintiffs claim at least \$95,009.45 in unpaid wages, interest, and statutory penalties
7 regarding their individual claims, plus at least \$79,200.00 in PAGA civil penalties, and
8 \$48,065.00 in fees and costs. Decl. of Rodolfo Ruiz-Velasco ¶6.

9 Defendants have claimed that Defendant and owner Jose Roberto Mireles is undergoing
10 serious financial difficulties and is unable to pay a judgment in the event of Plaintiffs securing a
11 judgment against Defendants in this case, due to the following reasons: Mr. Mireles claims that
12 his wife is currently seriously ill with leukemia and that this is causing a great burden on him
13 financially, that he has lost clients and thus is earning less money than he usually does, that he
14 barely has enough funds to pay his employees and his living expenses, that he is paying his
15 attorneys’ fees for his defense with landscaping bartering, that he is having trouble with paying
16 his mortgage on his residence, that the equity on his residence would be exempt if he were to file
17 for bankruptcy, and that he does not own any assets other than his residence. See Decl. of
18 Rodolfo Ruiz-Velasco, ¶7.

19 After several pre-litigation and post-litigation negotiation communications, and after
20 mediation with mediator John Edwards, the Parties were able to compromise the claims reaching
21 a global settlement of the entire action. See Decl. of Rodolfo Ruiz-Velasco, ¶8 and a true and
22 correct copy of the the settlement agreement between the Parties attached to Decl. of Rodolfo
23 Ruiz-Velasco as Exhibit 1.

24 One thousand dollars (\$1,000.00) has been deemed and agreed by the Parties to be an
25 appropriate allotted amount to settle the 7th cause of action for PAGA civil penalties with
26 nonexempt landscaping employees of Defendants as the aggrieved employees (“aggrieved
27 employees”) and where the PAGA period is deemed from one year before the date of filing of
28 PAGA written notice of May 10, 2021, or May 10, 2020, minus tolling pursuant to California

1 Rule of Court Emergency Rule 9(a) of 178 days from May 10, 2020 to February 9, 2020,
2 therefore, from February 9, 2020 to the date of this hearing, which is August 23, 2022 (“PAGA
3 period”). (Ruiz-Velasco Decl.). Defendants’ counsel shall distribute the PAGA civil penalties to
4 the aggrieved employees who worked during the PAGA Period on a pro rata basis depending on
5 the number of pay periods they worked during the PAGA Period, and Plaintiff’s attorney shall
6 distribute the civil penalties to the California LWDA.

7 Here, Defendants own and operate a landscaping company in San Diego County named
8 Mireles Landscaping Inc. Plaintiffs were employed by Defendants as landscapers. Plaintiffs were
9 paid weekly. Plaintiffs claim that Defendants underpaid their hours worked and earned.
10 Plaintiffs also claim that they were not fully relieved of their duties during their meal and rest
11 periods. In fact, Defendants failed to maintain any time records of the employees’ time worked in
12 violation of Wage Order section 7, and the Plaintiffs’ and witnesses’ testimony shows that
13 Plaintiffs worked overtime hours, however, that they were not paid for overtime hours worked
14 (“wage theft”), and that they were not fully relieved of his duties during their meal and rest
15 periods in violation of California Labor Code 226.7 and 512 and the California Wage Orders. As
16 a consequence of the above violations, the pay records produced are inaccurate in violation of
17 Labor Code Section 226 and the Wage Orders.

18
19 The total potential PAGA civil penalties Plaintiffs calculated are at least \$79,200 for at
20 least approximately 6 employees per pay period from February 9, 2020 to August 23, 2022,
21 calculated as 133 pay periods x 6 aggrieved employees x \$100 = at least \$79,200 in potential
22 PAGA civil penalties (Ruiz-Velasco Decl.). Defendants deny all violations.

23
24 All of Plaintiffs’ individual causes of action were initially resolved in a settlement
25 agreement on or about August 8, 2022. After the Court denied the Parties’ first Joint Ex Parte
26 Application to Approve the PAGA Penalties Settlement at the ex parte hearing on August 23,
27 2022, the Parties entered into a new settlement agreement on August 25, 2022 which more
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1 specifically defines the scope of the release of the PAGA claim to include claims that are
2 reasonably related to the allegations in the Complaint in this case, and invalidated the previous
3 settlement agreement of August 8, 2022.

4
5 Plaintiffs do not object to the \$1,000 PAGA penalties amount because (1) the Defendant
6 cooperated with Plaintiff's investigation by providing payroll records, time records, and other
7 records, (2) the Defendants disputed all claimed violations, (3) the Defendants provided that they
8 are undergoing serious financial difficulties per the above, and (4) the Parties have decided to
9 compromise to save attorneys' fees and costs given the uncertainties of litigation and because
10 further litigating this case would significantly increase fees and costs for the Parties.

11
12 The time period of February 9, 2020 to August 23, 2022 was used as the time period in
13 question to reflect the one-year statute of limitations for penalties per the above. Of the one
14 thousand dollars (\$1,000.00), seven hundred fifty dollars (\$750.00) or seventy-five percent
15 (75%) will be paid by Defendants to the California Labor Workforce Development Agency
16 ("LWDA") and two hundred fifty dollars (\$250.00) or twenty-five percent (25%) will be paid by
17 Defendants to the aggrieved employees pro rata depending on the number of pay periods
18 worked.

19
20 The Parties were able to reach a compromised settlement after mediation with mediator
21 John Edwards and after undertaking significant written discovery involving review of over 400
22 pages of records produced by Defendants, including financial records, plus records from
23 Plaintiffs and the other aggrieved employees, and 5 sets of written discovery with meet and
24 confer communications, preparation for depositions, and multiple communications and
25 negotiations between Plaintiffs' and Defendants' counsel required to finally settle all causes of
26 action for the Plaintiffs on their individual six causes of action as follows for (1) failure to pay
27 wages, (2) failure to timely furnish accurate itemized wage statements in violation of Labor Code
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1 section 226(a), (3) unfair business practices, (4) waiting time penalties per Labor Code section
2 203, (5) meal and rest period violations, and (6) failure to reimburse business expenses, along
3 with the seventh cause of action for PAGA penalties.
4

5 **VI. CONCLUSION**

6 Based upon the totality of the facts and circumstances, Plaintiffs respectfully request the
7 Court that the PAGA civil penalty amount of \$1,000.00 be judicially approved pursuant to Labor
8 Code section 2699 and be imposed on Defendants.

9 Dated: August 26, 2022

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12 Rodolfo Ruiz-Velasco, Esq.
13 Attorneys for Plaintiffs
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1. I am an attorney licensed to practice law in the state of California and am the attorney for Plaintiffs Jose S. Rivera and Porfirio N. Alvarez (“Plaintiffs”) in the above referenced action. Unfortunately, I inadvertently and regretfully failed to appear at the ex parte hearing in this case held on August 23, 2022, and sincerely apologize to the Court and my colleagues for my mistake and any waste of time this may have caused.

3. On or about May 28, 2021 Plaintiffs filed their Complaint in this case alleging claims for (1) failure to pay wages, (2) failure to timely furnish accurate itemized wage statements in violation of Labor Code section 226(a), (3) unfair business practices, (4) waiting time penalties per Labor Code section 203, (5) meal and rest period violations, and (6) failure to reimburse business expenses. On or about July 15, 2021, Plaintiffs filed their First Amended Complaint to add the seventh cause of action for PAGA civil penalties pursuant to Labor Code section 2699 et seq.

1 show the times when Plaintiffs and the other aggrieved employees were performing work, and
2 from which we calculated damages.

3 5. Plaintiffs allege that the records produced by Defendants show violations in that the pay
4 records show that Defendants underpaid Plaintiff, show meal period violations, and as a
5 consequence of these violations, show records violations in violation of the Labor Code.
6 Defendants deny the violations.
7

8 6. Plaintiffs claimed at least \$95,009.45 in this litigation in unpaid wages due to wage theft,
9 unpaid premium wages due to failure to fully relieve of duties during meal and rest periods,
10 failure to reimburse business expenses, interest on wages and failure to reimburse, waiting time
11 penalties, and inaccurate paycheck statement damages regarding their individual claims, plus
12 civil penalties pursuant to PAGA of at least \$79,200.00, and plus fees and costs which are
13 currently at over 48,065.00.
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15 7. Defendant Jose Roberto Mireles's counsel, Steven Elia, has specifically claimed to me,
16 and supported with records and financials, that Mr. Mireles is undergoing serious financial
17 difficulties and that he is unable to pay a judgment in the event Plaintiffs secure a judgment
18 against Defendants in this case, due to the following reasons: Mr. Mireles claims that his wife is
19 currently seriously ill with leukemia and that this is causing a great burden on him financially,
20 that Mr. Mireles has lost clients and thus is earning less money than he usually does, that he
21 barely has enough funds to pay his employees and his living expenses, that he is paying Mr.
22 Elia's attorneys' fees and costs for his defense with landscaping services bartering, that he is
23 having trouble with paying his mortgage on his residence having been late on his mortgage
24 payments in the last few months, that the equity on his residence would be exempt if he were to
25 file for bankruptcy, and that he does not own any assets other than his residence.
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1 8. Despite the above differences and disputes regarding the viability of said claims, after
2 multiple negotiation discussions before and after this case was filed, and after mediation with
3 mediator John Edwards, the Parties were able to compromise the claims reaching a tentative
4 global settlement to settle all causes of action including the seventh cause of action for PAGA
5 civil penalties and fees and costs in an initial settlement agreement on or about August 8, 2022.
6 My colleague Garrett Groom who appeared at the ex parte hearing on behalf of Defendants
7 communicated to me that the Court denied the first Application for Approval at the ex parte
8 hearing held on or about August 23, 2022 due to the PAGA claim release in the initial settlement
9 agreement being overbroad. On August 25, 2022 the Parties entered into a new settlement
10 agreement which better defines the scope of the PAGA release which applies to claims that are
11 reasonably related to the allegations in the Complaint, pursuant to *Amaro v. Anaheim Arena*
12 *Mgmt., LLC* (2021) 69 Cal. App. 5th 521, 538 and which supersedes the initial settlement
13 agreement (A true and correct copy of the settlement agreement between the Parties is attached
14 hereto as Exhibit 1, see paragraph 4 of the settlement agreement). The settlement of all claims is
15 contingent on the Court approving the settlement of the PAGA claim. Upon Court approval of
16 this settlement, Plaintiffs will request to dismiss this case in its entirety. This settlement
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21 9. Defendants have agreed to a global settlement regarding Plaintiffs' claims, including
22 PAGA civil penalties of \$1,000.00, of which 75% or \$750.00 is to be distributed to the California
23 LWDA by my office and 25% or \$250.00 is to be distributed pro rata to the aggrieved employees
24 who worked from February 9, 2020 to August 23, 2022 by Defendants' counsel. Defendants
25 must pay the PAGA penalties on or before December 1, 2023 pursuant to a monthly payment
26 plan.
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1 10. I have given Defendants' counsel Steve Elia, Garrett Groom, and Maura Griffin and the
2 California Workforce Development Agency ("LWDA") notice of this hearing, and have also
3 served them with a copy of these Ex Parte papers, including a copy of the settlement agreement
4 attached hereto as Exhibit 1 (See proof of service, filed concurrently herewith).

6 11. I have been in practice full time as a litigator for over 12 years. I received my law
7 degree from California Western School of Law in May of 2009, took and passed the California
8 Bar exam in August of 2009, and was sworn in as a member of the California State Bar in
9 December of 2009. I have been a practicing litigator since then. I have handled over one hundred
10 employment and wage and hour cases, four wage and hour trials in this Court of which I was
11 successful in all four, including a PAGA trial in 2015 involving over 70 employees in Dept. 73
12 (Case No. 37-2013-00058208-CU-OE-CTL) and was also successful in the appeal on this case
13 with our Fourth District Court of Appeals, which is now a published opinion (*Atempa v.*
14 *Pedrazzani*, (2018) 27 Cal.App. 5th 809), and a PAGA trial in 2017 in Dept. 61 (now Dept. 64)
15 in which I was awarded a lodestar rate of \$400.00 per hour plus a multiplier of 2.0 on my fees in
16 that PAGA trial (Case No. 37-2015-00030224-CU-OE-CTL), six unemployment appeal hearings
17 in which I was successful in all, and three matters with the Labor Commissioner which were all
18 resolved prior to trial. I was a member of the San Diego County Bar Association from 2009 to
19 2014, and a barrister member of the William B. Enright Inns of Court from 2011 to 2015. I
20 volunteered with Legal Aid Society of San Diego from 2010 to 2013, and was awarded with the
21 Wiley W. Manuel Award for pro bono legal services in 2011 and 2012. I was a member of
22 Consumer Attorneys of San Diego from 2011-2018 and wrote a wage and hour law related article
23 in its publication, Trial Bar News entitled "The Shell Game: When Corporate Officers Take the
24 Money and Run". I am an active member of California Employment Lawyers Association

1 (CELA) since 2015 and was a featured speaker in their 12th Annual Advanced Wage and Hour
2 Seminar in 2016 in a program called “PAGA Developments, Trial Practice and Case
3 Management”, and have been invited to speak at their events on multiple occasions. I have been
4 selected as a Super Lawyer Rising Star in Employment Litigation in San Diego County
5 (2017-2022).
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7 I declare under penalty of perjury under the laws of the state of California that foregoing
8 is true and correct and based upon my personal knowledge.
9

10 Dated: August 26, 2022

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13 Rodolfo Ruiz-Velasco, Esq.
14 Attorney for Plaintiffs
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EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

1. Parties. This Settlement Agreement and Release of All Claims ("**Agreement**") is made by and between Jose S. Rivera and Porfirio N. Alvarez (collectively, "**Employees**") and Mireles Landscaping, Inc. and Jose Roberto Mireles (collectively, "**Employer**") (singularly, "**Party**"; both Employees and Employer collectively, "**Parties**") in order to resolve all outstanding issues and set forth all obligations between the Parties. This Agreement is effective 7 (seven) days after the date that Employees send their signed copy of this Agreement to Employer's counsel, that is, on the eighth day ("**Effective Date**") (See paragraph 8.b. below).

2. Purpose of Agreement/Claims.

a. Employees worked for Employer as landscapers and laborers in approximately December 2017 to January 2020. Employees filed several claims in San Diego County Superior Court regarding their employment, including, but not limited to, their payment of minimum, regular, and overtime wages, meal and rest periods, waiting time penalties, records violations, failure to reimburse business expenditures, and related penalties, interest, and attorneys' fees ("**Employees' Individual Claims**"), as well as an action pursuant to the Private Attorneys General Act of 2004 ("PAGA") for civil penalties on behalf of themselves and the other aggrieved employees (collectively, "Employees' Claims") in San Diego County Superior Court Case No. 37-2021-00023588-CU-OE-CTL ("Superior Court action"). The PAGA action is LWDA Case No. LWDA-CM-831740-21, which includes claims brought by aggrieved employees ("PAGA action").

b. The purpose of this Agreement is to settle completely and cause the release of Employer and its Releasees from every employment-related individual claim and/or cause of action that Employees have, may have, or may pursue or participate in any manner against Employer and its Releasees, arising out of or related to any aspect of Employees' work for Employer as of the Effective Date of this Agreement, including, but not limited to, any work performed for Employer, Employees' separation of employment, all wages and compensation of any kind, and each of Employees' claims set forth in Employees' Claims, and also includes settling the PAGA action in San Diego County Superior Court, upon approval of the Court.

c. In the event that the Court does not approve the settlement of the PAGA action, then this Agreement will become null and void in its entirety, and the Parties can either negotiate a new settlement or continue to litigate the case.

3. Release Payment. In consideration of the waivers and releases in this Agreement, and on the condition that Employees sign this Agreement, Employer shall pay the sum of **\$50,000.00** (Fifty thousand dollars) for the release of any and all employment-related claims, settlement of the PAGA action, and attorneys' fees and costs ("**Release Payment**"). \$1,000.00 (one thousand dollars) of the Release Payment shall be allocated to the settlement of the PAGA action. The Release Payment shall be made in 16 (sixteen) payments as follows:

a. A first payment of \$5,000.00 (five thousand dollars) in the form of a check made payable to "Ruiz-Velasco Law Client Trust Account", shall be paid and delivered no later than 5 (five) days from the date that the Court approves the settlement of the PAGA Action in this case, and after the Effective Date of this Agreement at Employees' counsel's office located at Rodolfo Ruiz-Velasco, Ruiz-Velasco Law, 600 W. Broadway Suite 700, San Diego, CA 92101;

b. Provided the Court approves the settlement of the PAGA Action, the following 14 (fourteen) payments shall be paid in equal monthly installments of \$3,000.00 (three thousand dollars), each in the form of a check made payable to "Ruiz-Velasco Law Client Trust Account". The monthly installments shall be paid and delivered at Employees' counsel's office located at Rodolfo Ruiz-Velasco, Ruiz-Velasco Law, 600 W. Broadway Suite 700, San Diego, CA 92101, on or before the 1st of each month as follows: 1st installment of \$3,000.00 is due on or before October 1, 2022; 2nd

installment of \$3,000.00 is due on or before November 1, 2022; 3rd installment of \$3,000.00 is due on or before December 1, 2022, etc.... and the 14th installment of \$3,000.00 is due on or before November 1, 2023.

c. The final payment of \$3,000.00 shall be paid as follows: \$2,000 shall be paid in the form of a check made payable to "Ruiz-Velasco Law Client Trust Account" and shall be paid and delivered at Employees' counsel's office located at Rodolfo Ruiz-Velasco, Ruiz-Velasco Law, 600 W. Broadway Suite 700, San Diego, CA 92101 on or before December 1, 2023; \$750.00 shall be paid in the form of a check made payable to "California Labor Workforce Development Agency" and shall be delivered at Employees' counsel's office located at Rodolfo Ruiz-Velasco, Ruiz-Velasco Law, 600 W. Broadway Suite 700, San Diego, CA 92101 on or before December 1, 2023; and the remaining \$250.00 shall be distributed by Employer's counsel to the aggrieved employees as their 25% portion of the PAGA civil penalties, per the Ex Parte Application for Approval of Settlement of the PAGA Action on or before December 1, 2023 (see 4. Below), and Employer's counsel shall include the attached Exhibit A entitled Notice to Aggrieved Employees to the aggrieved employees along with their share of the civil penalties payment.

d. Plaintiff's counsel shall pay the \$750.00 in civil penalties as the 75% portion to the California LWDA within 15 days of receiving this final monthly payment from Defendants.

e. The Employee agrees that the Release Payment is sufficient consideration for a release of all claims relating to Employee's relationship with Employer, except as provided by this Agreement.

4. Settlement of the PAGA Action and Scope of Release of the PAGA Action.

a. In exchange for the consideration described herein, the PAGA action is released as to claims that are reasonably related to the allegations in the Complaint in this Superior Court action.

b. Upon Employees' counsel receiving Employer's signatures on the Agreement, Employees' counsel shall draft and file an Ex Parte Application for Approval of Settlement of the PAGA Action in San Diego County Superior Court ("Ex Parte Application"), and Employer and its counsel shall cooperate and not oppose the Ex Parte Application.

c. Employer and/or its counsel shall provide to the Court regarding the Ex Parte Application, if and as required by the Court, Employer's financial condition and inability to pay any further PAGA civil penalties as stated to Employees, such as due to his wife's serious illness, his lack of assets and funds to pay any further PAGA penalties, inability to pay his mortgage payments, etc., per Labor code section 2699I(2).

d. The period of time for purposes of the PAGA civil penalties shall be February 9, 2020 to the date of Court approving the PAGA penalties settlement.

5. Mutual General Release of All Individual Claims.

a. In exchange for the consideration described herein, Employees, on their own behalf and on behalf of their descendants, dependents, heirs, executors, legal representatives, administrators, agents, assigns, and successors (collectively, "**Releasors**"), hereby covenant not to sue and fully and unconditionally forever release and discharge Employer and its past, present, or future predecessors, successors, assigns, affiliates, parent and subsidiary companies, other entities owned by the same owners, related entities, and joint ventures, and their respective past, present, or future officers, directors, employees, stockholders, representatives, managers, members, partners, agents, advisors (including any financial advisors, attorneys, and accountants), insurers, indemnitees, vendors, contractors, guests, and customers (individually, each a "**Releasee**," and collectively, the "**Releasees**") from and against any and all individual claims, causes of action, judgments, investigations, liens, demands, damages, obligations, suits,

contracts, liabilities, losses, costs, and expenses, including, but not limited to, attorneys' fees and disbursements, or offsets of any nature whatsoever (collectively, "**Claims**") that Releasors now have, have had, or may hereafter have against the Releasees arising out of or relating to any aspect of the Parties' relationship, including, but not limited to, those claims arising out of or relating to (i) Employees' work performed for Employer (as a contractor and an employee), (ii) Employees' separation of employment, (iii) Employees' performance and reputation, (iv) harassment, discrimination, and retaliation/whistleblower, and (v) any Claims arising under the Fair Labor Standards Act, the California Labor Code, the Private Attorneys General Action of 2004 the California Business and Professions Code, California Fair Employment and Housing Act, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Federal Rehabilitation Act, the Employee Retirement Income Security Act, the California Family Rights Act, the Family and Medical Leave Act, the Families First Coronavirus Response Act, and any other federal, state, or local law or ordinance governing employment.

b. In exchange for the consideration described herein, Employer and its Releasees fully and unconditionally forever release and discharge Employees and their Releasors from and against any and all claims that they now have, have had, or may hereafter have against Employees and their Releasors, as of the Effective Date of this Agreement, arising out of or relating to any aspect of the Parties' relationship.

c. Except for any rights created by this Agreement and except with respect to the release of the PAGA action which shall be governed by Article 4 of this Agreement, this General Release is intended to be interpreted as broadly as possible and to apply to any and all claims available to the Parties in any forum and pursuant to any applicable laws, including, but not limited to, any claims for unpaid compensation or wages (as a contractor and an employee), unpaid penalties or premiums, liquidated damages, class or representative actions governing employment (to the fullest extent allowed by applicable law), constructive termination, negligent or intentional infliction of emotional distress, harassment, discrimination, retaliation, wrongful termination, negligence, breach of contract, breach of the covenant of good faith and fair dealing, promissory estoppel, fraud, negligent or intentional misrepresentation, negligent or intentional interference with contract or prospective economic advantage, unfair business practices, defamation, libel, slander, personal injury, assault, battery, invasion of privacy, false imprisonment, conversion, disability benefits, violation of any provision of federal or state law governing employment, and any claim for attorneys' fees or costs. All such claims are forever barred and by this Agreement. However, this release shall not apply to claims for workers' compensation benefits or unemployment insurance benefits or any other claims that Employee or Employer cannot, by statute, lawfully waive by this Agreement.

6. **Waiver.** It is the intention of the Parties in executing this Agreement that it shall be effective as a bar to each and every claim specified above. In the furtherance of this intention, the Parties expressly waive all rights and benefits conferred upon them by the provisions of California Civil Code section 1542 and expressly consent that this Agreement shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown and unsuspected claims, and causes of action, if any. California Civil Code section 1542 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 must have materially affected his or her settlement with the debtor or released party.

The Parties certify that they have read all of this Agreement, including the release provisions contained herein and the quoted section above, and that they fully understand all of the same. The Parties hereby expressly agree that this Agreement shall extend and apply to all unknown, unexpected, and unanticipated claims, as well as those that are now disclosed. For clarity, in no event shall this 1542 waiver be interpreted to bind PAGA action members other than Employees.

7. No Admission of Liability. The Parties agree that this Agreement, and the performance of the acts required by it, does not constitute an admission of liability or wrongdoing on the part of anyone and will not be used for any purpose as an admission of liability or wrongdoing.

8. ADEA/OWBPA Release. Employees understand and agree that this Agreement constitutes a knowing and voluntary waiver and release of Employees' rights and claims under the Age Discrimination in Employment Act ("ADEA") and pursuant to the Older Workers Benefit Protection Act ("OWBPA").

a. Employees further acknowledge that Employees are aware that Employees have twenty-one (21) days during which to consider the provisions of this ADEA/OWBPA release, although Employees may sign and return it sooner.

b. Employees acknowledges that Employees have the right to revoke this Agreement for a period of seven (7) days after signing it. Accordingly, this Agreement shall not become effective or enforceable until the eighth day following Employees' execution of this Agreement.

c. To revoke this Agreement, Employees must provide a written notice of revocation to Steven A. Elia, Esq. of Elia Law, 2221 Camino Del Rio South, Suite 207, San Diego, CA 92108, steve@elialaw.com within seven days of signing this Agreement.

9. Entire Agreement. The Parties agree that this Agreement contains the entire agreement between them, or any other Releasee, or any present or former agent or employees thereof, with respect to the matters addressed in this Agreement. It supersedes and replaces all prior negotiations and all agreements proposed or otherwise, whether written or oral, concerning the subject matter of this Agreement. Specifically, it supersedes the settlement agreement entered into by the Parties on or about August 8, 2022, thus making it invalid. It is agreed that there are no collateral agreements or representations regarding the subject matter of this Agreement that are not contained in this Agreement.

10. Modification. No changes in, additions to, or modifications of this Agreement shall be valid unless set forth in writing and executed by all Parties hereto.

11. No Representations. Neither Party has made, nor relied upon, any oral or written representations not contained in this Agreement and its incorporated documents.

12. Own Attorneys' Fees and Costs. The Parties agree that they shall bear their own respective costs and fees, including attorneys' fees, in connection with the negotiation and execution of this Agreement.

13. Knowing and Voluntary. Both Parties acknowledge that they have had the opportunity to consult with legal counsel prior to entering into this Agreement. Both Parties further represent that they are entering into this Agreement freely and voluntarily and not relying on the representations of any other party or of the counsel of any other party except the representations and warranties expressly set forth in this Agreement.

14. Severability. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Agreement that can be given effect without the invalid provisions or applications and to this end the provisions of this Agreement are declared to be severable.

15. Governing Law; Venue. This Agreement is made in California and shall in all respects be interpreted, enforced, and governed by California law without regard to the principles of conflicts of law. The Parties agree that any and all claims arising out of or related to this Agreement or the matters referred to herein shall be heard and decided pursuant to the following paragraph.

16. Enforcement; Future Attorneys' Fees and Costs. Pursuant to California Code of Civil Procedure §664.6, both parties agree that the Court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement. In the event of any breach of this Agreement, the

prevailing Party or Parties is or are entitled to reasonable costs and attorney's fees incurred in enforcing this agreement.

17. Counterparts; Headings. This Agreement may be executed in counterparts, and each counterpart, when executed, shall have the efficacy of a signed original. Photographic, scanned, digital signatures (e.g., DocuSign or HelloSign), or faxed copies of such signed counterparts may be used in lieu of the originals for any purpose. The headings in this Agreement are only for convenience and ease of reference and are not to be considered in construction or interpretation.

18. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective Parties and their heirs, executors, administrators, agents, representatives, successors, and assigns.

19. No Transfer/Assignment of Claims. The Parties warrant and represent that they have not assigned or transferred or purported to assign or transfer to any person or entity all or any part of or any interest in any claim released under this Settlement Agreement.

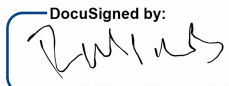
Dated: August 25, 2022


Employee, Jose S. Rivera

Dated: August 25, 2022


Employee, Porfirio N. Alvarez

Dated: 8/26/2022, 2022

By: 
7B33663491E241B...
Employer, Mireles Landscaping, Inc.

Dated: 8/26/2022, 2022

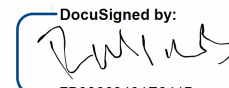
By: 
7B33663491E241B...
Employer, Jose Roberto Mireles

EXHIBIT “A”

Rivera, et al. v. Mireles Landscaping, Inc. et al.

San Diego Superior Court Case No. 37-2021-00023588-CU-OE-CTL

NOTICE TO AGGRIEVED EMPLOYEES

This notice relates to the settlement of a lawsuit pursuant to the Private Attorneys General Act of 2004 (“PAGA”). A PAGA action is an action for civil penalties in which the State of California receives 75% of the civil penalties collected.

Jose S. Rivera and Porfirio N. Alvarez (“Plaintiffs”), former employees of Mireles Landscaping, Inc. (“MLI”) and its owner and officer Jose Roberto Mireles (collectively, “Defendants”), filed lawsuit against Defendants in San Diego Superior Court, Case No. 37-2021-00023588-CU-OE-CTL (the “Action”). Plaintiffs brought this lawsuit as a representative action under the PAGA, on behalf of the State of California and certain other current and former non-exempt (hourly) employees of MLI who worked for the company at any time from May 10, 2020 to ____ (Date of Court approval of PAGA civil penalties settlement).

Plaintiffs allege that Defendants failed to comply with the California Labor Code governing wages, meal and rest periods, accurate itemized wage statements, timely payment of wages following separation of employment, business expenses reimbursements, and maintenance of employee records. Defendants deny the claims in the Action and assert that no civil penalties are due to Plaintiffs, the State of California, or other allegedly “aggrieved employees.” The Court has made no determination on the merits of the Action, but the parties have decided to resolve this case through settlement, with the approval of the Court.

You have received this notice because MLI’s records indicate that you were among the employees whom Plaintiffs alleges were potentially aggrieved by one or more of the practices about which he complains (i.e., you are or were a non-exempt or hourly employee who worked for MLI in California from May 10, 2020, to the date of the Court approval of the PAGA civil penalties settlement). The Parties have agreed that a portion of the settlement proceeds would be distributed to the allegedly aggrieved employees, including you, after certain portions of the penalties collected are paid to the State of California according to California law.

The enclosed check represents your portion of the settlement payment, which is based on your share of the total settlement proceeds that the parties have agreed to be paid to the allegedly aggrieved employees. You may deposit or cash the check without any further obligation on your part and there is no need for you to contact the settlement administrator, the parties, or the Court. This settlement releases claims for civil penalties under the PAGA relating to wages, meal breaks, rest breaks, accurate itemized wage statements, and timely payment of wages. Your individual rights are unaffected.

The Court has approved civil penalties pursuant to PAGA in the amount of \$1,000.00, and payment to the Labor Workforce Development Agency in an amount equal to 75% of that portion of the settlement allocated to civil penalties. The remaining amount of \$250.00 is being paid to hourly employees who worked for MLI in California at any time from May 10, 2020 to (the date of the Court approval of the PAGA civil penalties settlement), proportionally based on the number of workweeks the employee worked compared to the number of workweeks worked by all hourly employees who worked for MLI during the relevant period.

You have been credited with [MERGED] workweeks for purposes of calculating your individual settlement payment.

You are encouraged to deposit your check promptly. Any checks that remain uncashed six months from the date of this notice shall be void and the unclaimed funds shall be distributed as ordered by the Court.

If you have questions about this notice, please contact the Defendants' counsel at:

Steven A. Elia
Garrett F. Groom
ELIA LAW FIRM, APC
2221 Camino del Rio South, Suite 207
San Diego, California 92108
Telephone: (619) 444-2244

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THIS PROCEEDING.

PLEASE DO NOT CONTACT THE COURT REGARDING THIS CASE.