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PORFIRIO N. ALVAREZ

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

**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: August 23, 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 August 23, 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 9, 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 The Parties therefore, respectfully request that this Court approve the PAGA settlement as
15 set forth in the proposed order filed concurrently herewith pursuant to Labor Code §2699(1)(2).

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

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

19 **III. THE COURT HAS WIDE DISCRETION IN APPROVING PAGA**
20 **PENALTIES THAT ARE BINDING**

21 Pursuant to Labor Code Section 2699(e)(2) the Court has discretion as it pertains to the
22 amount of the penalty and "may award a lesser amount than the maximum civil penalty amount
23 specified by this part if, based on the facts and circumstances of the particular case, to do
24 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

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1 **IV. THE PROPOSED PAGA PENALTIES ARE REASONABLE GIVEN THAT**
2 **DEFENDANTS DISPUTE THE LABOR CODE VIOLATIONS ALLEGED BY**
3 **PLAINTIFFS, DEFENDANTS HAVE COOPERATED WITH PLAINTIFFS’**
4 **INVESTIGATION, DEFENDANTS’ FINANCIAL CONDITION, AND THAT THE**
5 **PARTIES WOULD LIKE TO COMPROMISE TO SAVE ON FEES AND COSTS THAT**
6 **WOULD INCREASE SIGNIFICANTLY UPON FURTHER LITIGATION**

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

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

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

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

22 Plaintiffs claim at least \$95,009.45 in unpaid wages, interest, and statutory penalties
23 regarding their individual claims, plus at least \$79,200.00 in PAGA civil penalties, and
24 \$48,065.00 in fees and costs. Decl. of Rodolfo Ruiz-Velasco, ¶6.

25 Defendants have claimed that Defendant and owner Jose Roberto Mireles is undergoing
26 serious financial difficulties and is unable to pay a judgment in the event of Plaintiffs securing a
27 judgment against Defendants in this case, due to the following reasons: Mr. Mireles claims that
28 his wife is currently seriously ill with leukemia and that this is causing a great burden on him

1 financially, that he has lost clients and thus is earning less money than he usually does, that he
2 barely has enough funds to pay his employees and his living expenses, that he is paying his
3 attorneys' fees for his defense with landscaping bartering, that he is having trouble with paying
4 his mortgage on his residence, that the equity on his residence would be exempt if he were to file
5 for bankruptcy, and that he does not own any assets other than his residence. See Decl. of
6 Rodolfo Ruiz-Velasco, ¶7.

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

12 One thousand dollars (\$1,000.00) has been deemed and agreed by the Parties to be an
13 appropriate allotted amount to settle the 7th cause of action for PAGA civil penalties with
14 nonexempt landscaping employees of Defendants as the aggrieved employees ("aggrieved
15 employees") and where the PAGA period is deemed from one year before the date of filing of
16 PAGA written notice of May 10, 2021, or May 10, 2020, minus tolling pursuant to California
17 Rule of Court Emergency Rule 9(a) of 178 days from May 10, 2020 to February 9, 2020,
18 therefore, from February 9, 2020 to the date of this hearing, which is August 23, 2022 ("PAGA
19 period"). (Ruiz-Velasco Decl.). Defendants' counsel shall distribute the PAGA civil penalties to
20 the aggrieved employees who worked during the PAGA Period on a pro rata basis depending on
21 the number of pay periods they worked during the PAGA Period, and Plaintiff's attorney shall
22 distribute the civil penalties to the California LWDA.

23 Here, Defendants own and operate a landscaping company in San Diego County named
24 Mireles Landscaping Inc. Plaintiffs were employed by Defendants as landscapers. Plaintiffs were
25 paid weekly. Plaintiffs claim that Defendants underpaid their hours worked and earned.
26 Plaintiffs also claim that they were not fully relieved of their duties during their meal and rest
27 periods. In fact, Defendants failed to maintain any time records of the employees' time worked in
28 violation of Wage Order section 7, and the Plaintiffs' and witnesses' testimony shows that

1 Plaintiffs worked overtime hours, however, that they were not paid for overtime hours worked
2 (“wage theft”), and that they were not fully relieved of his duties during their meal and rest
3 periods in violation of California Labor Code 226.7 and 512 and the California Wage Orders. As
4 a consequence of the above violations, the pay records produced are inaccurate in violation of
5 Labor Code Section 226 and the Wage Orders.

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

10
11 All of Plaintiffs’ individual causes of action were resolved in a settlement on or about
12 August 8, 2022. Plaintiffs do not object to the \$1,000 PAGA penalties amount because (1) the
13 Defendant cooperated with Plaintiff’s investigation by providing payroll records, time records,
14 and other records, (2) the Defendants disputed all claimed violations, (3) the Defendants
15 provided that they are undergoing serious financial difficulties per the above, and (4) the Parties
16 have decided to compromise to save attorneys’ fees and costs given the uncertainties of litigation
17 and because further litigating this case would significantly increase fees and costs for the Parties.

18
19 The time period of February 9, 2020 to August 23, 2022 was used as the time period in
20 question to reflect the one-year statute of limitations for penalties per the above. Of the one
21 thousand dollars (\$1,000.00), seven hundred fifty dollars (\$750.00) or seventy-five percent
22 (75%) will be paid by Defendants to the California Labor Workforce Development Agency
23 (“LWDA”) and two hundred fifty dollars (\$250.00) or twenty-five percent (25%) will be paid by
24 Defendants to the aggrieved employees pro rata depending on the number of pay periods
25 worked.
26

27 The Parties were able to reach a compromised settlement after mediation with mediator
28 John Edwards and after undertaking significant written discovery involving review of over 400

1 pages of records produced by Defendants, including financial records, plus records from
2 Plaintiffs and the other aggrieved employees, and 5 sets of written discovery with meet and
3 confer communications, preparation for depositions, and multiple communications and
4 negotiations between Plaintiffs' and Defendants' counsel required to finally settle all causes of
5 action for the Plaintiffs on their individual six causes of action as follows for (1) failure to pay
6 wages, (2) failure to timely furnish accurate itemized wage statements in violation of Labor Code
7 section 226(a), (3) unfair business practices, (4) waiting time penalties per Labor Code section
8 203, (5) meal and rest period violations, and (6) failure to reimburse business expenses, along
9 with the seventh cause of action for PAGA penalties.
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12 **V. CONCLUSION**

13 Based upon the totality of the facts and circumstances, Plaintiffs respectfully request the
14 Court that the PAGA civil penalty amount of \$1,000.00 be judicially approved pursuant to Labor
15 Code section 2699 and be imposed on Defendants.
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17 Dated: August 9, 2022

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Rodolfo Ruiz-Velasco, Esq.
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.

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.

5. Plaintiffs allege that the records produced by Defendants show violations in that the pay records show that Defendants underpaid Plaintiff, show meal period violations, and as a

1 consequence of these violations, show records violations in violation of the Labor Code.

2 Defendants deny the violations.

3 6. Plaintiffs claimed at least \$95,009.45 in this litigation in unpaid wages due to wage theft,
4 unpaid premium wages due to failure to fully relieve of duties during meal and rest periods,
5 failure to reimburse business expenses, interest on wages and failure to reimburse, waiting time
6 penalties, and inaccurate paycheck statement damages regarding their individual claims, plus
7 civil penalties pursuant to PAGA of at least \$79,200.00, and plus fees and costs which are
8 currently at over 48,065.00.
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11 7. Defendant Jose Roberto Mireles's counsel, Steven Elia, has specifically claimed to me,
12 and supported with records and financials, that Mr. Mireles is undergoing serious financial
13 difficulties and that he is unable to pay a judgment in the event Plaintiffs secure a judgment
14 against Defendants in this case, due to the following reasons: Mr. Mireles claims that his wife is
15 currently seriously ill with leukemia and that this is causing a great burden on him financially,
16 that Mr. Mireles has lost clients and thus is earning less money than he usually does, that he
17 barely has enough funds to pay his employees and his living expenses, that he is paying Mr.
18 Elia's attorneys' fees and costs for his defense with landscaping services bartering, that he is
19 having trouble with paying his mortgage on his residence having been late on his mortgage
20 payments in the last few months, that the equity on his residence would be exempt if he were to
21 file for bankruptcy, and that he does not own any assets other than his residence.
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24 8. Despite the above differences and disputes regarding the viability of said claims, after
25 multiple negotiation discussions before and after this case was filed, and after mediation with
26 mediator John Edwards, the Parties were able to compromise the claims reaching a tentative
27 global settlement to settle all causes of action including the seventh cause of action for PAGA
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1 civil penalties and fees and costs (A true and correct copy of the settlement agreement between the
2 Parties is attached hereto as Exhibit 1). The settlement of all claims is contingent on the Court
3 approving the settlement of the PAGA claim. Upon Court approval of this settlement, Plaintiffs
4 will request to dismiss this case in its entirety.
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6 9. Defendants have agreed to a global settlement regarding Plaintiffs' claims, including
7 PAGA civil penalties of \$1,000.00, of which 75% or \$750.00 is to be distributed to the California
8 LWDA by my office and 25% or \$250.00 is to be distributed pro rata to the aggrieved employees
9 who worked from February , 2020 to August 23, 2022 by Defendants' counsel. Defendants must
10 pay the PAGA penalties on or before November 1, 2023 pursuant to a monthly payment plan.
11

12 10. I have given Defendants' counsel Steve Elia, Garrett Groom, and Maura Griffin and the
13 California Workforce Development Agency ("LWDA") notice of this hearing, and have also
14 served them with a copy of these Ex Parte papers, including a copy of the settlement agreement
15 attached hereto as Exhibit 1 (See proof of service, filed concurrently herewith).
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17 11. I have been in practice full time as a litigator for over 12 years. I received my law
18 degree from California Western School of Law in May of 2009, took and passed the California
19 Bar exam in August of 2009, and was sworn in as a member of the California State Bar in
20 December of 2009. I have been a practicing litigator since then. I have handled over one hundred
21 employment and wage and hour cases, four wage and hour trials in this Court of which I was
22 successful in all four, including a PAGA trial in 2015 involving over 70 employees in Dept. 73
23 (Case No. 37-2013-00058208-CU-OE-CTL) and was also successful in the appeal on this case
24 with our Fourth District Court of Appeals, which is now a published opinion (*Atempa v.*
25 *Pedrazzani*, (2018) 27 Cal.App. 5th 809), and a PAGA trial in 2017 in Dept. 61 (now Dept. 64)
26 in which I was awarded a lodestar rate of \$400.00 per hour plus a multiplier of 2.0 on my fees in
27
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1 that PAGA trial (Case No. 37-2015-00030224-CU-OE-CTL), six unemployment appeal hearings
2 in which I was successful in all, and three matters with the Labor Commissioner which were all
3 resolved prior to trial. I was a member of the San Diego County Bar Association from 2009 to
4 2014, and a barrister member of the William B. Enright Inns of Court from 2011 to 2015. I
5 volunteered with Legal Aid Society of San Diego from 2010 to 2013, and was awarded with the
6 Wiley W. Manuel Award for pro bono legal services in 2011 and 2012. I was a member of
7 Consumer Attorneys of San Diego from 2011-2018 and wrote a wage and hour law related article
8 in its publication, Trial Bar News entitled "The Shell Game: When Corporate Officers Take the
9 Money and Run". I am an active member of California Employment Lawyers Association
10 (CELA) since 2015 and was a featured speaker in their 12th Annual Advanced Wage and Hour
11 Seminar in 2016 in a program called "PAGA Developments, Trial Practice and Case
12 Management", and have been invited to speak at their events on multiple occasions. I have been
13 selected as a Super Lawyer Rising Star in Employment Litigation in San Diego County
14 (2017-2022).

15 I declare under penalty of perjury under the laws of the state of California that foregoing
16 is true and correct and based upon my personal knowledge.

17 Dated: August 9, 2022

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23 Rodolfo Ruiz-Velasco, Esq.
24 Attorney for Plaintiffs
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EXHIBIT 1

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

1. Parties. This Confidential 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, 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 in San Diego County Superior Court Case No. 37-2021-00023588-CU-OE-CTL ("**Employees' Claims**"). The PAGA action is LWDA Case No. LWDA-CM-831740-21 ("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 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 September 1, 2022; 2nd installment of \$3,000.00 is due on or before October 1, 2022; 3rd installment of \$3,000.00 is due on or before November 1, 2022, etc.... and the 14th installment of \$3,000.00 is due on or before October 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 November 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 November 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 November 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.

4. Settlement of the PAGA Action.

a. 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.

b. 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 2699(e)(2).

c. 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 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 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 Act 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 Releasers from and against any and all claims that they now have, have had, or may hereafter have against Employees and their Releasers, 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, 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.

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. 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.

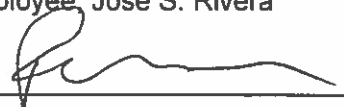
19. No Transfer/Assignment of Claims. The Parties warrant and represent that they have not assigned or transferred or purported to assign or transfer to any person or entity all or any part of or any interest in any claim released under this Settlement Agreement.

Dated: 8-8-22, 2022

Dated: 8-8-22, 2022



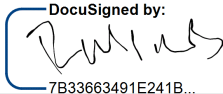
Employee, Jose S. Rivera



Employee, Porfirio N. Alvarez

Dated: 8/4/2022, 2022

Dated: 8/4/2022, 2022

By: 
Employer, Mireles Landscaping, Inc.

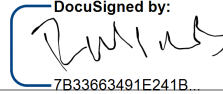
By: 
Employer, Jose Roberto Mireles

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.