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Attorneys for Plaintiff
ROMAN GOMEZ O'CADIZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ROMAN GOMEZ O'CADIZ, individually,
and on behalf of aggrieved employees
pursuant to the Private Attorneys General Act
("PAGA")

Plaintiff,

vs.

HABITAT HORTICULTURE, LLC, a
California limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 21STCV34384

*[Assigned for all purposes to Honorable Judge
Stephen I. Goorvitch – Dept. 39]*

**STIPULATION FOR ORDER
APPROVING SETTLEMENT PURSUANT
TO CALIFORNIA PRIVATE
ATTORNEYS GENERAL ACT AND
ENTERING JUDGMENT**

Complaint Filed: September 17, 2021
Trial Date: Not Set

1 Plaintiff Roman Gomez O’Cadiz (“Plaintiff”) and Defendant Habitat Horticulture,
2 LLC (“Defendant”) (collectively, “the Parties”), by and through their respective counsel
3 of record, hereby stipulate as follows:

4 1. **WHEREAS**, on or about February 7, 2022, the Parties engaged in
5 mediation with Phillip K. Cha, Esq., and executed the PAGA Settlement Agreement.¹
6 According to the PAGA Settlement Agreement, the “PAGA Released Claims” are defined
7 as: all claims for civil penalties under the PAGA with respect to the underlying alleged
8 Labor Code violations that were alleged or that could have been alleged based on the facts
9 and claims asserted in in the First Amended Complaint and in Plaintiff’s March 7, 2022
10 letter to the Labor and Workforce Development Agency, including, without limitation,
11 claims under the PAGA to recover civil penalties based on the following underlying
12 California Labor Code violations that arose between July 13, 2020 and February 7, 2022
13 (the “PAGA Period”):

14 (a) failing to pay the statutory minimum wage for all hours worked to
15 Plaintiff and similarly aggrieved employees in violation of Labor Code §§ 1182.12, 1194,
16 1194.2, 1197 and 1197.1;

17 (b) failing to pay overtime wages for all overtime hours worked to
18 Plaintiff and similarly aggrieved employees in violation of Labor Code §§ 510, 1194,
19 1198;

20 (c) failing to provide all meal periods in violation of Labor Code §§
21 226.7, 512;

22 (d) failing to authorize and permit all rest periods in violation of Labor
23 Code §§ 226.7, 516, and 1198;

24 (e) failing to reimburse Plaintiff and similarly aggrieved employees’
25 business expenses in violation of Labor Code § 2802;

26
27
28 ¹ A true and correct copy of the PAGA Settlement Agreement is attached hereto as **Exhibit A**, and its
defined terms are hereby incorporated by reference.

1 (f) failing to furnish Plaintiff and similarly aggrieved employees with
2 complete, accurate, itemized wage statements in violation of Labor Code §§ 226 and
3 226.3;

4 (g) failing to pay Plaintiff and similarly aggrieved employees all earned
5 wages at least twice during each calendar month in violation of Labor Code § 204;

6 (h) failing to maintain accurate records in violation of Labor Code §
7 1174;

8 (i) failing to pay all wages owed to Plaintiff and similarly aggrieved
9 employees at end of employment in violation of Labor Code §§ 201-202.

10 2. **WHEREAS**, pursuant to the PAGA Settlement Agreement, on or about
11 March 7, 2022, Plaintiff Roman Gomez O’Cadiz sent an amended notice to the California
12 Labor Workforce Development Agency (“LWDA”) and to Defendant (the “PAGA
13 Amended Notice”) alleging that Defendant engaged in violations of the California Labor
14 Code and California Wage Orders, seeking civil penalties pursuant to the California Labor
15 Code Private Attorneys’ General Act (“PAGA”);

16 3. **WHEREAS**, on or about May 12, 2022, Plaintiff will have exhausted his
17 waiting period for the LWDA to review and consider pursuing the claims alleged in the
18 PAGA Amended Notice. Plaintiff will then file the First Amended Representative Action
19 Complaint in the California Superior Court for the County of Los Angeles (the “FAC”),
20 on an individual basis and on a representative basis under PAGA on behalf of all
21 Aggrieved Employees as defined in the PAGA Settlement Agreement, alleging the
22 following causes of action: (1) failure to pay minimum wage; (2) failure to pay overtime;
23 (3) failure to provide meal periods; (4) failure to authorize or permit rest periods; (5)
24 failure to reimburse necessary business expenses; (6) failure to timely furnish accurate,
25 itemized wage statements; (7) waiting time penalties pursuant to Labor Code § 203; (8)
26 unfair competition; and (9) PAGA civil penalties (the “Action”);

1 4. **WHEREAS**, for purposes of Plaintiff's representative claims under PAGA,
2 "Aggrieved Employees" is defined as all current and former non-exempt employees of
3 Defendant in California between July 13, 2020 and February 7, 2022;

4 5. **WHEREAS**, Defendant vigorously disputes and denies the allegations and
5 various causes of action asserted in the Action, including, without limitation, Plaintiff's
6 and the Aggrieved Employees' claim for civil penalties pursuant to PAGA;

7 6. **WHEREAS**, in connection with mediation, the Defendant provided a
8 sampling of timekeeping records and payroll data for the Aggrieved Employees as well as its
9 wage and hour policies. Plaintiff conducted an analysis of the sample payroll data and time
10 records and extrapolated the finding to the Aggrieved Employees to calculate Defendant's
11 potential exposure for Plaintiff's PAGA claim. This detailed analysis of the informal discovery
12 allowed the Parties to assess the merits and value of Plaintiff's PAGA claim and defenses thereto.

13 7. **WHEREAS**, Plaintiff's counsel has significant experience litigating and
14 resolving the type of wage-and-hour claims alleged in the Action, including claims for
15 civil penalties under PAGA, including serving as lead counsel in the following representative
16 PAGA actions, the settlements of which have received court approval: *Michael Citera, et al. v.*
17 *The Griddle Cafe, Inc.*, Case No. BC657253, California Superior Court, County of Los Angeles,
18 Honorable Maureen Duffy-Lewis presiding; *Brandon Gilbrech, et al. v. Bellum Entertainment,*
19 *LLC, et al.*, Case No. BC684298, California Superior Court, County of Los Angeles, Honorable
20 Joseph R. Kalin presiding; *Harold Rayas, et al. v. Instant Flooring LLC, et al.*, Case No.
21 RIC1806812, California Superior Court, County of Riverside, Honorable Sunshine S. Sykes
22 presiding; *Angel Garcia v. S.W. Corporation*, Case No. 30-2018-01032432-CU-OE-CXC,
23 California Superior Court, County of Orange, Honorable Glenda Sanders presiding; *Carlos*
24 *Vazquez Franco v. South Hills Country Club*, Ca No. 19STCV16457, County of Los Angeles,
25 Honorable Robert B. Broadbelt presiding; *Elsie Parker v. Fashion Nova, Inc., et al.*, Case No.
26 BC709650, California Superior Court, County of Los Angeles, Honorable Maren E. Nelson
27 presiding; *Juarez v. Safeguard on Demand*, Case No. 30-2019-01119468-CU-OE-CXC,
28 California Superior Court, County of Orange, Honorable James J. Di Cesare presiding;

1 8. **WHEREAS**, *California Labor Code § 2699(l)(2)* requires that this Court
2 review and approve any settlement pursuant to PAGA;

3 9. **WHEREAS**, the PAGA Settlement Agreement contemplates:

4 (a) issuance of a Court order approving the PAGA Settlement
5 Agreement and entering judgment pursuant to the PAGA Settlement Agreement;

6 (b) discharge of the Released Parties from and with respect to the PAGA
7 Released Claims;

8 (c) release by Plaintiff, the State of California, and all Aggrieved
9 Employees with respect to the PAGA Released Claims; and

10 (d) barring and enjoining Plaintiff, the State of California, and all
11 Aggrieved Employees from instituting or prosecuting, either directly or indirectly,
12 individually, collectively, and/or representatively, any and all PAGA Released Claims,
13 such that the PAGA Settlement Agreement may be pleaded by any Released Parties as a
14 full and complete defense to, and may be used as the basis for an injunction or in support
15 of other remedies against, any action, suit or other proceeding that has been or may be
16 instituted, prosecuted or attempted, asserting any PAGA Released Claims;

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

22 11. **WHEREAS**, based on their own independent investigations and
23 evaluations, the Parties and their respective counsel are of the opinion that the settlement
24 of the PAGA Released Claims on the terms set forth in the PAGA Settlement Agreement
25 are fair, reasonable and adequate and is in the best interests of the Parties, the LWDA, and
26 Aggrieved Employees in light of all known facts and circumstances and the risks inherent
27 in litigation;

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

6 13. **WHEREAS**, Plaintiff submitted a copy of this Joint Stipulation and the
7 proposed PAGA Settlement Agreement to the LWDA in accordance with California
8 Labor Code § 2699(l)(2). A true and correct copy of the confirmation e-mail received
9 from the LWDA is attached hereto as **Exhibit B**;

10 14. **WHEREAS**, in consideration of the terms and conditions set forth in the
11 PAGA Settlement Agreement, the Parties agree to be bound to the terms and conditions
12 set forth in the PAGA Settlement Agreement, including that:

13 a. Defendant shall pay Seventy Thousand Dollars and Zero Cents
14 (\$70,000.00) as the non-reversionary Gross Settlement Amount. Defendant will not pay
15 more than the Gross Settlement Amount. Defendant shall deposit the Gross Settlement
16 Amount with the Settlement Administrator within thirty (30) business days after the
17 Effective Date;

18 b. The Parties agree that the following amounts should be subtracted
19 from the Gross Settlement Amount, if approved by the Court, resulting in a Net Settlement
20 Amount to distribute to the LWDA and Aggrieved Employees:

21 i. Attorneys' fees in the amount of \$24,500.00, which
22 constitutes thirty-five percent (35%) of the Gross Settlement Amount, and costs of
23 \$6,508.43 incurred in prosecuting this Action, consisting of court and LWDA filing fees,
24 mediation costs, messenger/service costs, and copying costs. In the event the Court
25 approves a payment of less than these amounts, the difference will be added to the Net
26 Settlement Amount (although Plaintiff may appeal an order granting less than the full
27 amount sought for attorneys' fees and costs). If the Court believes the Fee Award should
28 be reduced, the other terms of the settlement will remain in effect and any such reduction

will not affect the remaining terms, other than adjusting the Net Settlement Amount. Defendant, via the Settlement Administrator, will report these payments on IRS Form 1099 issued to Plaintiff's Counsel.

ii. Settlement Administrator's costs to third-party administrator ILYM Group, Inc. in the amount of \$2,190.00 for administering the Settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net Settlement Amount. Defendant, via the Settlement Administrator, will report this payment on IRS Form 1099 issued to the Settlement Administrator

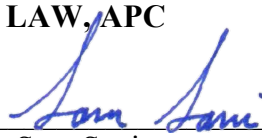
c. This Court shall retain jurisdiction to enforce the terms of the PAGA Settlement Agreement pursuant to California Code of Civil Procedures § 664.6; and

d. The Parties shall bear their own respective costs and attorneys' fees, except as otherwise provided in the PAGA Settlement Agreement;

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

Dated: May 7, 2022

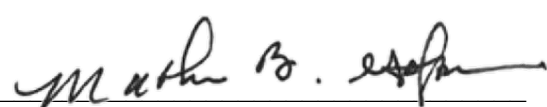
SANI LAW, APC

By: 

Sam Sani
Attorneys for Plaintiff
ROMAN G. O'CADIZ

Dated: May 7, 2022

**BALLARD ROSENBERG GOLPER &
SAVITT, LLP**

By: 

Matthew B. Golper
Attorney for Defendant
HABITAT HORTICULTURE, LLC

EXHIBIT A

PAGA SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into between Plaintiff Roman Gomez O'Cadiz (acting in a Private Attorney General capacity), on behalf of the State of California, himself, and similarly situated aggrieved employees, and Defendant Habitat Horticulture, LLC.

I. DEFINITIONS

The following terms, when used in this Settlement, shall have the following meanings:

1. "Action" means the matter entitled *Roman Gomez O'Cadiz v. Habitat Horticulture, LLC*, Los Angeles County Superior Court Case No. 21 STCV34384.
2. "Aggrieved Employees" consist of all current and former non-exempt employees of Defendant in California between July 13, 2020 and February 7, 2022.
3. "Defendant" means Defendant Habitat Horticulture, LLC.
4. "Complaint" means the Representative Action Complaint filed in the Action on September 17, 2021.
5. "First Amended Complaint" means the First Amended Representative Action Complaint to be filed to add individual and PAGA representative claims alleging Defendant (1) failed to pay the statutory minimum wage for all hours worked to Plaintiff and similarly aggrieved employees in violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197 and 1197.1; (b) failed to pay overtime wages for all overtime hours worked to Plaintiff and similarly aggrieved employees in violation of Labor Code §§ 510, 1194, 1198; (c) failing to reimburse Plaintiff and similarly aggrieved employees' business expenses in violation of Labor Code § 2802; (d) failing to furnish Plaintiff and similarly aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code §§ 226 and 226.3; (e) failing to pay all final wages at end of employment to Plaintiff and similarly aggrieved employees, which is attached hereto as **Exhibit A**.
6. "Court" means the Superior Court of California for the County of Los Angeles.
7. "Effective Date" means the date upon which approval of the Settlement Agreement is granted by the Court.
8. "Individual PAGA Payment" means the amount to be paid to each Aggrieved Employee based on the formula described herein.
9. "LWDA" means the California Labor and Workforce Development Agency.
10. "Gross Settlement Amount" is the non-reversionary sum of Seventy Thousand Dollars and No Cents (\$70,000.00), which represents the total amount payable under this Settlement by Defendant (subject to the Escalator Clause described below), including, without limitation, payments to all Aggrieved Employees, payment to the LWDA, payment of Plaintiff's attorneys' fees and costs, and payment to the Settlement Administrator for administration costs.

11. “Net Settlement Amount” is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts (if approved by the Court) are subtracted from the Gross Settlement Amount: (a) Plaintiff’s attorneys’ fees up to thirty-five percent (35%) of the Gross Settlement Amount, currently estimated at \$24,500.00; (b) Plaintiff’s costs up to \$7,500,000.00; and (c) administration costs up to \$2,200.00.

12. “PAGA” means the California Labor Code Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.*

13. “PAGA Period” means the time period from July 13, 2020 and February 7, 2022.

14. “Released Parties” means Defendant and all of its past and present owners, officers, directors, shareholders, employees, agents, assigns, attorneys, insurers, brands and concepts, parent companies, subsidiaries, and affiliates, and their respective predecessors, successors, assigns, and any individual or entity that could be jointly liable with Defendant.

15. “PAGA Released Claims” mean any and all claims for civil penalties under the PAGA with respect to the underlying alleged Labor Code violations that were alleged or that could have been alleged based on the facts and claims asserted in in the First Amended Complaint and in Plaintiff’s March 7, 2022 letter to the Labor and Workforce Development Agency, including, without limitation, claims under the PAGA to recover civil penalties based on the following underlying Labor Code violations: (a) failing to pay the statutory minimum wage for all hours worked to Plaintiff and similarly aggrieved employees in violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197 and 1197.1; (b) failing to pay overtime wages for all overtime hours worked to Plaintiff and similarly aggrieved employees in violation of Labor Code §§ 510, 1194, 1198; (c) failing to provide all meal periods in violation of Labor Code §§ 226.7, 512; (d) failing to authorize and permit all rest periods in violation of Labor Code §§ 226.7, 516, and 1198; (e) failing to reimburse Plaintiff and similarly aggrieved employees’ business expenses in violation of Labor Code § 2802; (f) failing to furnish Plaintiff and similarly aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code §§ 226 and 226.3; (f) failing to pay Plaintiff and similarly aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; (g) failing to maintain accurate records in violation of Labor Code § 1174; (h) failing to pay all wages owed to Plaintiff and similarly aggrieved employees at end of employment in violation of Labor Code §§ 201-202, that arose during the PAGA Period.

16. “Parties” mean Plaintiff and Defendant.

17. “Plaintiff” means Roman Gomez O’Cadiz.

18. “Plaintiff’s Counsel” means Sam Sani of Sani Law, APC.

19. “Settlement Administrator” means ILYM Group, Inc.

II. RECITALS

1. Plaintiff alleges that Defendant: failed to pay all minimum wages and overtime wages; failed to provide legally compliant meal periods; failed to authorize and permit duty-free rest periods; failed to reimburse necessary business expenses; failed to timely pay wages during

employment; failed to furnish complete, accurate, and itemized wage statements; failed to maintain accurate records; failed to pay all final wages at end of employment; and is liable for civil penalties under PAGA.

2. On July 13, 2021, Plaintiff provided written notice to the LWDA and Defendant asserting claims for civil penalties pursuant to PAGA stemming from alleged violations of the California Labor Code described above.

3. On September 17, 2021, Plaintiff filed the Complaint the in Action;

4. The Parties also engaged in informal discovery prior to mediation. Defendant provided Plaintiff's Counsel with information and documents pertaining to Plaintiff and other Aggrieved Employees for Plaintiff's Counsel to investigate Plaintiff's allegations and value the PAGA claim.

5. On February 7, 2022, the Parties participated in mediation before mediator Philip Cha, Esq. With the assistance of Mr. Cha, the Parties agreed to fully and finally resolve the PAGA Released Claims as to Plaintiff and Aggrieved Employees.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Amendment to Complaint.** As a material term and condition of this Settlement Agreement, Plaintiff and Defendant stipulate to Plaintiff's filing the First Amended Complaint in the form and substance attached hereto as **Exhibit A**. The Parties shall take all appropriate action required to be taken by the Parties, including to execute any other documents required, to effectuate leave for Plaintiff to file the First Amended Complaint.

2. **Non-Admission.** Nothing in this Settlement shall be construed to be an admission by Plaintiff that his claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, Aggrieved Employees, or any other person, and Defendant specifically disclaims any such liability or wrongdoing. The Parties have entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. This Settlement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

2. **Gross Settlement Amount.** Defendant shall pay Seventy Thousand Dollars and Zero Cents (\$70,000.00) as the non-reversionary Gross Settlement Amount. Defendant will not pay more than the Gross Settlement Amount (subject to the Escalator Clause below). Defendant shall deposit the Gross Settlement Amount with the Settlement Administrator within thirty (30) business days after the Effective Date.

3. **Escalator Clause.** Defendant represents there are approximately 785 bi-weekly pay periods worked by approximately 25 Aggrieved Employees from July 13, 2020 through February 7, 2022. If the actual number of pay periods worked by the Aggrieved Employees through February 7, 2022 increases by ten percent (10%) or more (i.e., if there are more than 864 pay periods worked by Aggrieved Employees from July 13, 2020 through February 7, 2022), then

Plaintiff has the discretionary option to rescind the Settlement by communicating that decision to both the Claims Administrator and Defendant in writing.

4. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees:

a. **Plaintiff's Attorneys' Fees and Costs.** Defendant will not oppose Plaintiff's request for attorneys' fees in the amount up to thirty-five percent (35%) of the Gross Settlement Amount (currently estimated to be \$24,500.00) and costs incurred in prosecuting this Action, up to \$10,000.00. In the event the Court approves a payment of less than these amounts, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for attorneys' fees and costs). If the Court believes the Fee Award should be reduced, the other terms of the settlement will remain in effect and any such reduction will not affect the remaining terms, other than adjusting the Net Settlement Amount. Defendant, via the Settlement Administrator, will report these payments on IRS Form 1099 issued to Plaintiff's Counsel.

b. **Administration Costs.** Defendant will not oppose the Settlement Administrator's costs in the amount up to \$2,200.00 for administering the Settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net Settlement Amount. Defendant, via the Settlement Administrator, will report this payment on IRS Form 1099 issued to the Settlement Administrator.

5. **Allocation of Net Settlement Amount.** The Net Settlement Amount shall be distributed pursuant to Labor Code § 2699(i) as follows:

a. 75% of the Net Settlement Amount shall be distributed to the LWDA.

b. 25% of the Net Settlement Amount shall be paid to Aggrieved Employees. This portion of the Net Settlement Amount shall be paid to all Aggrieved Employees pro rata based on the proportional number of pay periods worked by each Aggrieved Employee during the PAGA Period.

The Parties agree that should the Court deny approval of the Settlement based on the allocation of the Gross Settlement Amount or the Net Settlement Amount, the Parties agree to renegotiate the allocation of funds in good faith in an effort to obtain approval of the Settlement.

6. **Representative PAGA Release.** Upon entry of an Order approving the Settlement, in his capacity as a Private Attorney General or "aggrieved employee" acting on behalf of the State of California and Aggrieved Employees, Plaintiff hereby releases Defendant and Released Parties from any and all of the PAGA Released Claims that arose during the PAGA Period.

7. **PAGA Released Claims.** Plaintiff agrees that upon entry of an Order approving the Settlement, all Aggrieved Employees will release any and all PAGA Released Claims against the Released Parties that arose during the PAGA Period. Upon entry of the Order approving the Settlement and judgment entered thereon, Plaintiff and all Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against the Released Parties.

8. **Covenants and Representations by Plaintiff and Plaintiff's Counsel.**

a. Plaintiff represents and warrants that he has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement.

b. Plaintiff acknowledges that he has read this Settlement, that he fully understands his rights, privileges, and duties under the Settlement, and enters into this Settlement freely and voluntarily, and without duress. Plaintiff further acknowledges that he had the opportunity to consult with his attorneys to explain the terms of this Settlement and the consequences of signing this Settlement.

9. **Publicity.** Except as provided below, to the extent necessary to effectuate the Settlement or as required by court or legal process, Plaintiff will not disclose or publicize terms of this Settlement. Plaintiff and Plaintiff's counsel shall not issue a press release, hold a press conference, publish information about the Settlement on any website or through any social media or otherwise publicize the Settlement or communicate its terms (including the amount) in public or in private, unless ordered by the Court. To permit judicial review and approval of the PAGA Payment, as required by Labor Code Section 2698, *et seq.*, Plaintiff's Counsel will file the Settlement with the Court and submit the Settlement to the LWDA as part of the Parties' seeking Court approval of the Settlement, pursuant to Lab. Code § 2699(1)(2). In addition, for the limited purpose of allowing Plaintiff's Counsel to prove adequacy as class/representative counsel in other actions, Plaintiff's Counsel may disclose the name of the Parties in this action and the venue/case number of this action (but not any other settlement details) for such purposes.

10. **Termination of Settlement.** Except as otherwise provided herein, if the Court does not approve the Settlement, or if the Court does not enter judgment, as provided for in this Settlement, or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or, except as otherwise set forth herein, if one or more of the terms of the Settlement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within ten (10) days of written notice thereof to elect to terminate the Settlement, in which case the Settlement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement.

11. **Judgment.** As part of the Motion to approve the Settlement, Plaintiff shall submit a proposed order and judgment which enters judgment in the Action in accordance with the terms of the Settlement and retains jurisdiction over the Action for the purpose of enforcing the terms of the Settlement following approval of the Settlement. This Settlement is expressly conditioned upon the Court entering judgment as set forth herein. The judgment will not release or bar any claims other than the PAGA Released Claims as to Plaintiff and Aggrieved Employees. Plaintiff will present Defendant with the opportunity to review and comment on the Motion to approve the Settlement in advance of its filing.

IV. **ADMINISTRATION OF SETTLEMENT**

1. **Settlement Administrator.** The Parties agree to use ILYM Group, Inc. to handle the administration of this Settlement.

2. **Provision of Information for Aggrieved Employees.** Within fourteen (14) calendar days after the Effective Date, Defendant shall provide the Settlement Administrator with information for Aggrieved Employees. Defendant will in good faith compile from its records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last known mailing address, last known telephone number, start date(s) of employment, end date(s) of employment, total pay periods worked during the PAGA Period, and Social Security numbers. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement.

Within seven (7) calendar days of receiving the Aggrieved Employees' information from Defendant, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the estimated individual settlement payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall also determine whether the Escalator Clause in Section III.3 has been triggered. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

3. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for Aggrieved Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses.

Within two (2) business days of receiving approval from counsel of the payment calculations as provided above, the Settlement Administrator shall mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit B**, in English, along with Individual PAGA Payments to all Aggrieved Employees via regular First Class U.S. Mail.

The Settlement Administrator will calculate the amount to be received by each Aggrieved Employee, which will be based on the formula set forth in Section III.5., *supra*. The Settlement Administrator will send each Aggrieved Employee a check for his or her Individual PAGA Payment along with an explanatory letter. Checks will remain negotiable for 180 days. Each Individual PAGA Payment shall be deemed penalties/interest and reported using IRS Form 1099.

4. **Undeliverable Notices.** The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee.

Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other search using the name, address or Social Security number of the Aggrieved Employee involved and will perform a single re-mailing.

Defendant fully discharges its obligations to those Aggrieved Employees to whom it will pay an Individual PAGA Payment through the mailing of a check, regardless of whether such

checks are actually received and/or negotiated by Aggrieved Employees. Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the State Controller's Office under the unclaimed property fund laws in the names of the Aggrieved Employees to whom the checks were issued.

5. **Payment of Remainder.** Within two (2) business days of receiving approval from counsel of the payment calculations, the Settlement Administrator will distribute the following additional payments: (1) the 75% share of the Net Settlement Amount to the LWDA; (2) Court-approved attorneys' fees and costs to Plaintiff's Counsel; and (3) Court-approved administration costs to the Settlement Administrator.

6. **Accounting.** Within fifteen (15) business days of receiving approval from counsel of the payment calculations, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the Settlement.

7. **Tax Consequences.** Individual PAGA Payments made under this Settlement will be attributed 100% as penalties and interest and paid via IRS Form 1099 issued to each Aggrieved Employee. Neither Plaintiff nor Defendant, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement.

V. MISCELLANEOUS PROVISIONS

1. **Mutual Preparation and Drafting.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Plaintiff nor Defendant shall be considered the "drafter" of this Settlement for purposes of having terms construed against that Party. This Settlement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement.

2. **Successors.** This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, assigns, administrators and successors.

3. **Costs and Fees.** The Parties shall each bear their own costs, attorneys' fees, expert fees, mediator fees, and other fees incurred in connection with this Settlement, the Action, and Plaintiff's claims, except as otherwise set forth specifically herein.

4. **Governing Law.** This Settlement shall be construed under and governed by the laws of the State of California. This Settlement shall be deemed to have been entered into in the County of Los Angeles, California, and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement shall be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement, it shall be brought in the State of California, County of Los Angeles.

5. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement has been made to them and acknowledge

and represent that this Settlement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA claim in the Action. This Settlement cannot be amended or modified except by a writing signed by the Parties hereto.

6. **Nullification of Settlement.** In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.

7. **Judgment and Continued Jurisdiction.** After approval of this Settlement, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement.

8. **Amendment or Modification.** This Settlement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all Parties.

9. **Authorization to Enter into Settlement.** Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

10. **Execution and Counterparts.** This Settlement is subject only to the execution of all Parties. However, the Settlement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

11. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement is a fair, adequate and reasonable settlement of the Action, and have arrived at this Settlement after arm's-length negotiations by experienced counsel and with the assistance of an experienced mediator. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

12. **Invalidity of Any Provision.** Before declaring any provision of this Settlement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement valid and enforceable.

13. **Severability.** If any term or provision of this Settlement is held to be invalid or unenforceable, the remaining portions of this Settlement will continue to be valid and will be

performed, construed and enforced to the fullest extent permitted by Law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

14. **Waiver.** No waiver of any condition or covenant contained in this Settlement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

15. **Enforcement Action.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions. In any proceeding to enforce the terms of this Agreement, the Parties may disclose the terms of this Agreement to the extent necessary to enforce the Agreement, but shall make all efforts to preserve the confidentiality of this Agreement, including but not limited to filing the relevant provisions of the Agreement and/or discussion of these terms under seal or conditionally under seal to the fullest extent appropriate and possible.

16. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and this Settlement has been executed with the consent and advice of counsel and reviewed in full.

17. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement will be fully enforceable and binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

18. **Denial of Liability.** The Parties expressly recognize that the making of this Settlement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant. Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, if approved, this Settlement may be used in any Court proceeding that has as its purpose the interpretation, implementation or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

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

[Signatures on Next Page]

Dated: _____, 2022


Roman Gomez O'Cadiz (Mar 10, 2022 12:23 PST)

Roman Gomez O'Cadiz, Plaintiff

Dated: _____, 2022

Habitat Horticulture

By: _____

Its: _____

APPROVED AS TO FORM:

Dated: March 14, 2022

SANI LAW, APC

By:  _____

Sam Sani

Attorney for Roman Gomez O'Cadiz

Dated: _____, 2022

**BALLARD ROSENBERG GOLPER & SAVITT,
LLP**

By: _____

Matthew B. Golper

Attorneys for Habitat Horticulture, LLC

Dated: _____, 2022

Roman Gomez O'Cadiz, Plaintiff

Dated: 3/9, 2022



David Brenner (Mar 9, 2022 22:20 PST)

Habitat Horticulture

By: David Brenner

Its: Principal

APPROVED AS TO FORM:

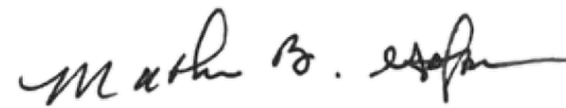
Dated: _____, 2022

SANI LAW, APC

By: _____
Sam Sani
Attorney for Roman Gomez O'Cadiz

Dated: March 14, 2022

**BALLARD ROSENBERG GOLPER & SAVITT,
LLP**

By: 

Matthew B. Golper
Attorneys for Habitat Horticulture, LLC

EXHIBIT A

SAM SANI, Bar No. 273993
SANI LAW, APC
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Encino, CA 91436
Telephone: (310) 935-0405
Facsimile: (310) 935-0409
ssani@sanilawfirm.com

Attorneys for Plaintiff
ROMAN GOMEZ O'CADIZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ROMAN GOMEZ O'CADIZ, individually, and
on behalf of aggrieved employees pursuant to
the Private Attorneys General Act ("PAGA")
Plaintiff,

vs.

HABITAT HORTICULTURE, LLC, a
California limited liability company; and DOES
1 through 100, inclusive,
Defendants.

Case No.: 21STCV34384

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT**

1. MINIMUM WAGE VIOLATIONS (LABOR CODE §§ 1182.12, 1194, 1194.2, 1197);
2. OVERTIME WAGE VIOLATIONS (LABOR CODE §§ 510 1194, 1198);
3. MEAL PERIOD VIOLATIONS (LABOR CODE §§ 226.7 AND 512);
4. REST PERIOD VIOLATIONS (LABOR CODE §§ 226.7 AND 516);
5. FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES (LABOR CODE §§ 2802, 2804);
6. WAGE STATEMENT VIOLATIONS (LABOR CODE § 226 *et seq.*);
7. WAITING TIME PENALTIES (LABOR CODE §§ 201-203);
8. UNFAIR COMPETITION (BUS & PROF CODE § 17200 *et seq.*)
9. CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 *et seq.*)

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff ROMAN GOMEZ O'CADIZ ("Plaintiff"), on behalf of himself and all other
2 aggrieved employees, hereby brings this Representative Action Complaint ("Complaint") against
3 Defendant HABITAT HORTICULTURE, LLC ("HH LLC"), a California limited liability
4 company, and Does 1 through 100, inclusive (collectively, "Defendants"), and on information
5 and belief alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. Plaintiff brings this action against Defendants for California Labor Code
8 violations, unfair business practices, and civil penalties stemming from Defendants' failure to pay
9 the statutory minimum wage for all hours worked, failure to pay overtime wages for all overtime
10 hours worked, failure to provide meal periods, failure to authorize and permit rest periods, failure
11 to reimburse all necessary business expenses, failure to furnish complete, accurate, itemized wage
12 statements, and failure to pay all final wages due at end of employment. Plaintiff brings this
13 action for recovery of unpaid premium wages, statutory penalties, and civil penalties under
14 California Labor Code § 2698, *et seq.*, and the applicable Industrial Welfare Commission Wage
15 Order ("Wage Order").

16 2. Venue is proper in this judicial district pursuant to California Code of Civil
17 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
18 occurred in the County of Los Angeles. Defendants own, maintain offices, transact business, have
19 agent(s) within the County of Los Angeles, and/or otherwise are found within the County of Los
20 Angeles, and Defendants are within the jurisdiction of this Court for purposes of service of
21 process.

22 **PARTIES**

23 3. Plaintiff is, and at all times relevant herein was, a competent individual over the
24 age of eighteen (18) residing in the state of California. During the statute of limitations periods
25 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-
26 exempt employee in California, and performed services for Defendants throughout California
27 including, but not limited to, Los Angeles County. Plaintiff was, and is, a victim of Defendants'
28 policies and/or practices complained of herein, lost money and/or property, and has been deprived

1 of the rights guaranteed by applicable provisions of the California Labor Code, and the applicable
2 Wage Order, including Wage Order 16, which sets employment standards for employees in the
3 construction, drilling, logging, and mining industries and/or Wage Order 8, which sets
4 employment standards for employees in the industries handling products after harvest including
5 preparing horticultural products for distribution.

6 4. Plaintiff is informed and believes, and based thereon alleges, that at all times
7 mentioned herein, Defendant Habitat Horticulture, LLC was and is a limited liability company
8 organized and existing under the laws of the State of California and registered to do business in
9 the state of California.

10 5. Plaintiff is informed and believes, and based thereon alleges, that during the statute
11 of limitations periods applicable to each cause of action pled herein and continuing to the present,
12 Defendants did (and do) business as a living walls contractor. Defendants employed Plaintiff and
13 aggrieved employees within the State of California and, therefore, were (and are) doing business
14 in the State of California.

15 6. Plaintiff does not know the true names or capacities, whether individual, partner,
16 or corporate, of the defendants sued herein as DOES 1 through 100, inclusive, and for that reason,
17 said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court
18 to amend this Complaint when such true names and capacities are discovered. Plaintiff is
19 informed and believes, and based thereon alleges, that each of said fictitious defendants, whether
20 individual, partner, or corporate, were responsible in some manner for the acts and omissions
21 alleged herein, and proximately caused Plaintiff and aggrieved employees to be subject to the
22 unlawful employment practices, wrongs, injuries, and damages complained of herein.

23 7. Plaintiff is informed and believes, and based thereon alleges, that at all times
24 mentioned herein, Defendants were and are the employers of Plaintiff and all other aggrieved
25 employees.

26 8. At all times herein mentioned, each of said Defendants participated in the doing
27 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
28 Defendants, and each of them, were the agents, servants, and employees of each and every one of

the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

9. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all aggrieved employees.

GENERAL FACTUAL ALLEGATIONS

10. Defendant HH LCC is in the business of providing living walls contracting and maintenance services for clients throughout California.

11. Plaintiff was employed by Defendants as a non-exempt Living Wall Caretaker based out of Defendants' Los Angeles, California warehouse and at various assigned locations, including locations throughout Los Angeles County, from approximately February 10, 2020, to approximately May 6, 2021. Throughout his employment with Defendants, Plaintiff was generally responsible for traveling to various assigned client sites and caring for vertical gardens and interior plants and gardens.

12. Plaintiff regularly worked five days per week during shifts that started and ended at various times depending on the client sites where he was assigned to work. Plaintiff's shift started generally around 6:00 a.m. to 7:00 a.m. but sometimes as early as 4:30 a.m., and ended generally around 3:00 p.m. to 5:00 p.m. but sometimes as late as after 6:00 p.m. Plaintiff sometimes worked shifts greater than ten hours in length.

13. During the applicable statute of limitations period, Defendants subjected Plaintiff and other non-exempt aggrieved employees to control during their travel to/from their homes and assigned client locations at the start and end of their shifts ("Travel Time"), including requiring employees to carry tools and supplies in their vehicles to perform their job duties. Defendant was thus required to compensate Plaintiff and similarly aggrieved hourly employees for such Travel

1 Time but failed to do so. This timekeeping and payroll policy/practice resulted in Plaintiff and
2 other non-exempt aggrieved employees not being compensated for all hours worked. Plaintiff is
3 therefore owed unpaid minimum wages, and unpaid overtime wages for the hours during which
4 he worked but received no compensation.

5 14. During the applicable statute of limitations period, Defendants failed to provide
6 Plaintiff and other non-exempt aggrieved employees legally compliant meal breaks during their
7 shifts. Defendants' unlawful meal period policies and/or practices (1) failed to provide Plaintiff
8 and other non-exempt aggrieved employees an uninterrupted 30-minute off-duty meal period
9 before the end of their fifth hour of work, and (2) failed to provide Plaintiff and other non-exempt
10 aggrieved employees a second uninterrupted 30-minute off-duty meal period before the end of
11 their tenth hour of work. Defendants scheduled Plaintiff and other non-exempt aggrieved
12 employees to back-to-back appointments such that it was impossible for Plaintiff and other non-
13 exempt aggrieved employees to stop working to take a 30-minute uninterrupted duty-free meal
14 break before the end of their fifth hour of work and/or a second 30-minute uninterrupted duty-
15 free meal break before the end of their tenth hour of work. Nonetheless, in the event that a
16 required meal period was not in fact provided, Defendants never paid Plaintiff or other non-
17 exempt aggrieved employees the meal period premiums required by Labor Code § 226.7.

18 15. During the applicable statute of limitations period, Defendants also failed to
19 authorize and permit Plaintiff and other non-exempt aggrieved employees to take all legally
20 required rest periods because Defendants discouraged Plaintiff and other aggrieved employees
21 from taking legally compliant rest periods and pressured them to work through their rest periods.
22 Despite Defendants' failure to authorize and permit all required rest periods, Defendants never
23 provided Plaintiff or, upon information and belief, other aggrieved non-exempt employees with
24 an hour of pay at their regular rate for each rest period violation as required by Labor Code §
25 226.7.

26 16. During the applicable statute of limitations period, Defendants subjected Plaintiff
27 and other non-exempt aggrieved employees to control during their Travel Time. Despite being
28 subject to Defendants' control and being required to incur mileage expenses to perform their work

1 duties during their Travel Time, Plaintiff and other non-exempt aggrieved employees were never
2 reimbursed by Defendants for such mandatory mileage expenses incurred during their Travel
3 Time, as mandated by Labor Code § 2802.

4 17. As a result of Defendants' failure to pay all minimum wages and overtime wages
5 to Plaintiff and other non-exempt aggrieved employees, Defendants maintained inaccurate payroll
6 records and issued inaccurate wage statements to Plaintiff and other non-exempt aggrieved
7 employees.

8 18. As a result of Defendants' failure to pay all minimum wages and overtime wages
9 to Plaintiff and other non-exempt aggrieved employees, Defendants failed to pay them all wages
10 owed upon the end of employment.

11 **FIRST CAUSE OF ACTION**
12 **MINIMUM WAGE VIOLATIONS**
13 **(AGAINST ALL DEFENDANTS)**

14 19. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 20. The applicable Wage Order and California Labor Code §§ 1197 and 1182.12
16 establish the right of employees to be paid minimum wages for all hours worked, in amounts set
17 by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been
18 paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance
19 together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal
20 to the unpaid wages and interest accrued thereon.

21 21. As discussed in the factual allegations contained herein, Defendants failed to
22 conform their timekeeping practices to the requirements of the law. Accordingly, Plaintiff was
23 not compensated for all hours worked including, but not limited to, all hours he was subject to the
24 control of Defendants and/or suffered or permitted to work under the California Labor Code and
25 applicable Wage Order.

26 22. Defendants' policy and practice of not paying all minimum wages violates
27 California Labor Code §§ 204, 210, 216, 558, 1182.12, 1197.1, 1198, and the applicable Wage
28 Order.

23. Such a practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 558, 1194, 1198, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION
OVERTIME WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

24. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25. The applicable Wage Order and California Labor Code §§ 510, 1194, and 1198 establish the right of employees to be paid one and one-half times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday or more than 40 hours in any workweek, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek, in amounts set by state law. Labor Code §§ 1194(a) and provides that an employee who has not been paid overtime wages as required by Labor Code § 510 may recover the unpaid balance together with interest accrued thereon, attorneys' fees, and costs of suit.

26. As discussed in the factual allegations contained herein, at all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by causing Plaintiff to work in excess of 8 hours per workday, and/or 40 hours per workweek, but failing to compensate Plaintiff at one and one-half times his regular rate of pay for all overtime hours worked.

27. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff has sustained economic damages, including but not limited to unpaid overtime wages and lost interest, in an amount to be established at trial, and he is entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and the applicable Wage Order.

28. Defendants' practice and uniform administration of corporate policy regarding

1 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff in
2 a civil action for the unpaid amount of overtime wages, including interest thereon, statutory
3 penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 558, 510,
4 1194, 1198, and Code of Civil Procedure § 1021.5.

5 **THIRD CAUSE OF ACTION**

6 **MEAL PERIOD VIOLATIONS**

7 **(AGAINST ALL DEFENDANTS)**

8 29. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

9 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 failed in their affirmative obligation to provide Plaintiff and other non-exempt aggrieved
11 employees all required meal periods in accordance with the mandates of the California Labor
12 Code and the applicable Wage Order, for the reasons set forth in the factual allegations of this
13 Complaint. Despite Defendants' violations, Defendants did not pay an additional hour of pay to
14 Plaintiff and other non-exempt aggrieved employees at their respective regular rates of pay for
15 each meal period violation, as required by Labor Code § 226.7.

16 31. As a result, Defendants are responsible for paying premium compensation for meal
17 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
18 applicable Wage Order, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

19 **FOURTH CAUSE OF ACTION**

20 **REST PERIOD VIOLATIONS**

21 **(AGAINST ALL DEFENDANTS)**

22 32. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

23 33. The applicable Wage Order and California Labor Code §§ 226.7 and 516 establish
24 the right of employees to be provided with a rest period of at least ten (10) minutes for each four
25 (4) hour period worked, or major fraction thereof. "In the context of an eight-hour shift, '[a]s a
26 general matter,' one rest break should fall on either side of the meal break." Brinker Restaurant
27 Corp. v. Superior Court, 53 Cal. 4th 1004, 1032 (2012).

28 34. Due to Defendants' unlawful rest period policies and/or practices as set forth in

1 the factual allegations section of this Complaint, Defendants did not authorize and permit Plaintiff
2 and other non-exempt aggrieved employees to take all rest periods to which they were legally
3 entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay to
4 Plaintiff and other non-exempt aggrieved employees at their respective regular rates of pay for
5 each rest period violation, in accordance with California Labor Code § 226.7.

6 35. The foregoing violations create an entitlement to recovery by Plaintiff in a civil
7 action for the unpaid amount of rest period premiums owing, including interest thereon, statutory
8 penalties, and costs of suit pursuant to the applicable Wage Order, California Labor Code §§
9 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

10 **FIFTH CAUSE OF ACTION**

11 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

12 **(AGAINST ALL DEFENDANTS)**

13 36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

14 37. It was necessary for Plaintiff to incur mileage expenses to perform his work duties
15 during Travel Time without reimbursement. Although Plaintiff incurred these expenses at the
16 direction of Defendants and/or in the direct discharge of his job duties, Defendants did not
17 reimburse Plaintiff for such necessary work expenditures during the four years preceding the
18 filing of the Complaint.

19 38. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
20 states that "an employer shall indemnify his or her employees for all necessary expenditures or
21 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
22 his or her obedience to the directions of the employer."

23 39. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
24 states that "any contract or agreement, express or implied, made by any employee to waive the
25 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
26 employee or his personal representative of any right or remedy to which he is entitled under the
27 laws of this State."

28 40. As a proximate result of Defendants' policies and/or practices in violation of Labor

Code §§ 2802 and 2804, Plaintiff was damaged in sums, which will be shown according to proof.

41. Plaintiff is entitled to attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

42. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff is entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

44. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and/or practice, failed to furnish Plaintiff with accurate and complete itemized wage statements that included, among other requirements, total hours worked, and total gross and net straight and overtime wages earned in violation of Labor Code § 226.

45. Defendants' failure to furnish Plaintiff with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all his minimum wages, and overtime wages, and deprived him of the information necessary to identify the discrepancies in Defendants' reported data.

46. Defendants' failures create an entitlement to recovery by Plaintiff in a civil action for all damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, civil penalties, reasonable attorney's fees, and costs of suit according to Labor Code §§ 226 and 226.3.

SEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

48. This cause of action is brought pursuant to Labor Code §§ 201-203, which require

1 an employer to pay all wages earned immediately at the time of termination of employment in the
2 event the employer discharges the employee, or the employee provides at least 72 hours of notice
3 of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
4 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
5 employee's last date of employment.

6 49. Plaintiff is informed and believes, and based thereon alleges, that Defendants
7 failed to timely pay Plaintiff all final wages due to them at the time of his separation, which
8 includes, among other things, unpaid minimum wages and unpaid overtime wages. Defendants'
9 failure to pay all final wages was wilful within the meaning of Labor Code § 203.

10 50. Defendants' wilful failure to timely pay Plaintiff his earned wages upon separation
11 from employment results in a continued payment of wages up to thirty (30) days from the time
12 the wages were due. Therefore, Plaintiff is entitled to compensation pursuant to Labor Code §
13 203, plus reasonable attorneys' fees and costs of suit.

14 **EIGHTH CAUSE OF ACTION**

15 **UNFAIR COMPETITION**

16 **(AGAINST ALL DEFENDANTS)**

17 51. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

18 52. Defendants have engaged and continue to engage in unfair and/or unlawful
19 business practices in California in violation of California Business and Professions Code § 17200
20 et seq. by engaging in the unlawful conduct described above, including failing to pay all wages
21 owed, failing to provide all legally required meal and rest periods or pay legally compliant
22 premium payments in lieu thereof, and failing to reimburse all necessary business expenses.

23 53. Defendants' utilization of these unfair and/or unlawful business practices deprived
24 Plaintiff and continues to deprive other non-exempt aggrieved employees of compensation to
25 which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an
26 unfair advantage over Defendants' competitors who have been and/or are currently employing
27 workers and attempting to do so in honest compliance with applicable wage and hour laws.

28 54. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged

1 herein, Plaintiff for himself, seeks full restitution of monies, as necessary and according to proof,
2 to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to
3 Business and Professions Code §§ 17203 and 17208.

4 55. The acts complained of herein occurred within the last four years immediately
5 preceding the filing of the Complaint in this action.

6 56. Plaintiff was compelled to retain the services of counsel to file this court action to
7 protect his interests, to obtain restitution and injunctive relief on behalf of Defendants' current
8 hourly non-exempt employees and to enforce important rights affecting the public interest.
9 Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which she is
10 entitled to recover under Code of Civil Procedure § 1021.5.

11 **NINTH CAUSE OF ACTION**

12 **PRIVATE ATTORNEYS GENERAL ACT**

13 **(AGAINST ALL DEFENDANTS)**

14 57. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 58. Defendants have committed several Labor Code violations against Plaintiff and
16 other similarly aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of
17 Labor Code § 2698 et seq., acting on behalf of himself and other similarly aggrieved employees,
18 brings this representative action against Defendants to recover the civil penalties due to Plaintiff,
19 other similarly aggrieved employees, and the State of California according to proof pursuant to
20 Labor Code § 2699 (a) and (f) including, but not limited to \$100.00 for each initial violation and
21 \$200 for each subsequent violation per employee per pay period for the following Labor Code
22 violations:

- 23 a. Failing to compensate at least the California minimum wage for all hours
24 worked to Plaintiff and other similarly aggrieved employees in violation of
25 Labor Code §§ 1182.12, 1194, 1194.2, 1197
26 b. Failing to compensate overtime wages for all hours worked over eight-hours in
27 a workday or over forty-hours in a workweek to Plaintiff and other similarly
28 aggrieved employees in violation of Labor Code §§ 510, 1194, 1198;

- c. Failing to provide all legally required meal periods, or to pay premium pay in lieu thereof, to Plaintiff, and other similarly aggrieved employees in violation of Labor Code §§ 226.7, 512, and 558;
- d. Failing to authorize and permit all legally required rest periods, or to pay premium pay in lieu thereof, to Plaintiff, and other similarly aggrieved employees in violation of Labor Code §§ 226.7, 516, and 558;
- e. Failing to reimburse Plaintiff and other similarly aggrieved employees for all necessary work expenses incurred in violation of Labor Code §§ 2802 and 2804;
- f. Failing to furnish Plaintiff and other similarly aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226
- g. Failing to pay Plaintiff and other similarly aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204;
- h. Failing to pay Plaintiff and other similarly aggrieved employees all earned wages due at the end of their employments in violation of Labor Code §§ 201-202;
- i. Failing to maintain accurate records on behalf of Plaintiff and other similarly aggrieved employees in violation of Labor Code § 1174.

59. On or about July 13, 2021, Plaintiff notified Defendants via certified mail and filed an online PAGA claim notice with the California Labor and Workforce Development Agency (“LWDA”) identifying Defendants’ violations of the California Labor Code identified in the Complaint and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. Plaintiff also submitted a filing fee of seventy-five dollars (\$75.00) to the LWDA in accordance with Labor Code § 2699.3(a)(1)(B). On or about _____, 2022, Plaintiff notified Defendants via certified mail and filed online an amended PAGA claim notice with the California Labor and Workforce Development Agency (“LWDA”) identifying Defendants’ violations of the California Labor Code identified in this First Amended Complaint and Plaintiff’s intent to bring

1 a claim for civil penalties under California Labor Code § 2698 et seq. Sixty-five days have passed
2 from the date of Plaintiff's amended notice to the LWDA, and thus Plaintiff has exhausted his
3 administrative remedies, thereby allowing Plaintiff to commence a civil action against Defendants
4 pursuant to Labor Code § 2699.

5 60. Plaintiff was compelled to retain the services of counsel to file this court action to
6 protect his interests and the interests of other similarly aggrieved employees, and to assess and
7 collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and
8 costs, which he is entitled to receive under California Labor Code § 2699.

9 **PRAYER**

10 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
11 this suit is brought against Defendants, as follows:

12 1. Upon the First Cause of Action, for payment of minimum wages, liquidated
13 damages, and penalties according to proof pursuant to Labor Code § 558, 1194, 1194.2 and
14 1199;

15 2. Upon the Second Cause of Action, for payment of unpaid overtime wages, and
16 penalties according to proof pursuant to Labor Code §§ 510, 1194, and 1198;

17 3. Upon the Third Cause of Action, compensatory, consequential, general and special
18 damages according to proof pursuant to Labor Code §§ 226.7 and 512;

19 4. Upon the Fourth Cause of Action, for compensatory, consequential, general and
20 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;

21 5. Upon the Fifth Cause of Action, for compensatory, consequential, general and
22 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

23 6. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
24 226;

25 7. Upon the Seventh Cause of Action, for statutory penalties pursuant to Labor Code
26 §§ 201-203;

27 8. Upon the Eighth Cause of Action, for restitution to Plaintiff of all money and/or
28 property unlawfully acquired by Defendants by means of any acts or practices declared by this

1 Court to be in violation of Business and Professions Code § 17200 *et seq.*;

2 9. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other similarly
3 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
4 558 and 2699(a) and (f) including, but not limited to: (1) \$50.00 for each initial violation and
5 \$100 for each subsequent violation of Labor Code § 558 per employee per pay period plus an
6 amount sufficient to recover the unpaid wages and; (2) \$100.00 for each initial violation and \$200
7 for each subsequent violation per employee per pay period for the violations of the Labor Code
8 Sections cited in Labor Code § 2699.5;

9 10. Prejudgment interest on all due and unpaid wages pursuant to California Labor
10 Code § 218.6 and Civil Code §§ 3287 and 3289;

11 11. For attorneys' fees and costs on all causes of action that allows for such a recovery,
12 including as provided by Labor Code §§ 218.5, 226, 1194 *et seq.*, and Code of Civil Procedure §
13 1021.5; and

14 12. For such other and further relief, the Court may deem just and proper.

15
16
17 Dated: _____, 2022,

SANI LAW, APC

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19 By: _____

20 Sam Sani
21 Attorneys for Plaintiff
22 ROMAN G. O'CADIZ
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Dated: _____, 2022,

By: _____
 Sam Sani
 Attorneys for Plaintiff
 ROMAN G. O'CADIZ

EXHIBIT B

NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS

Roman Gomez O’Cadiz v. Habitat Horticulture, LLC
Los Angeles County Superior Court, Case No. 21STCV34384

<<Name>>
<<Address>>
<<City>>, <<State>> <<Zip Code>>
XX - XX - _ _ _ _

I. NOTICE OF PAGA SETTLEMENT

The Los Angeles County Superior Court (the “Court”) has approved a settlement in the above-captioned action filed by Roman Gomez O’Cadiz (“Plaintiff”) on behalf of himself and all other Aggrieved Employees.

In this lawsuit, Plaintiff is seeking to recover civil penalties for violations of the California Labor Code on behalf of the California Labor and Workforce Development Agency (“LWDA”) and other Aggrieved Employees under the California Private Attorneys General Act (“PAGA”). These civil penalties are based on Plaintiff’s allegations that Habitat Horticulture, LLC (“Defendant”): failed to pay all minimum wages and overtime wages; failed to provide legally compliant meal periods; failed to authorize and permit duty-free rest periods; failed to reimburse necessary business expenses; issued inaccurate wage statements; failed to pay all wages earned at end of employment; failed to timely pay wages during employment; failed to maintain accurate records; and is thus liable for civil penalties under PAGA.

The Court has **not** made a determination about Plaintiff’s claims. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of Plaintiff’s claims or Defendant’s legal and factual defenses to those claims.

Defendant denies Plaintiff’s allegations and any liability or wrongdoing of any kind. It maintains that its practices were lawful and at all times it complied with the California Labor Code, as applicable. Defendant enters into this Settlement with no admission of liability and solely for the purposes of compromising and settling the action to avoid the cost and operational burden of continued litigation.

You are receiving this Notice because you are in the group of employees referred to as “Aggrieved Employees,” which is defined as: “all current and former non-exempt employees of Habitat Horticulture, LLC in California between July 13, 2020 and February 7, 2022.” The “PAGA Period” is defined as the time period from July 13, 2020 and February 7, 2022.

II. INDIVIDUAL PAGA PAYMENT

Each individual PAGA payment was calculated on a pro rata basis (*i.e.*, proportional) based on the number of pay periods worked by each Aggrieved Employee in the PAGA Period. Your individual PAGA payment has been calculated at **\$[AMOUNT PAID TO THIS EMPLOYEE]**. Your payment is enclosed with this Notice.

III. RELEASE

The Court has approved the Parties' Settlement Agreement ("Settlement"). By operation of the Settlement's terms, all Aggrieved Employees including you will release Defendant and all of its past and present owners, officers, directors, shareholders, employees, agents, assigns, attorneys, insurers, brands and concepts, parent companies, subsidiaries, and affiliates, and their respective predecessors, successors, assigns, and any individual or entity that could be jointly liable with Defendant ("Released Parties") from any and all claims for civil penalties under the PAGA with respect to the underlying alleged Labor Code violations that were alleged or that could have been alleged based on the facts and claims asserted in in the First Amended Complaint and in Plaintiff's March 7, 2022 letter to the Labor and Workforce Development Agency, including, without limitation, claims under the PAGA to recover civil penalties based on the following underlying Labor Code violations: (a) failing to pay the statutory minimum wage for all hours worked to Plaintiff and similarly aggrieved employees in violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197 and 1197.1; (b) failing to pay overtime wages for all overtime hours worked to Plaintiff and similarly aggrieved employees in violation of Labor Code §§ 510, 1194, 1198; (c) failing to provide all meal periods in violation of Labor Code §§ 226.7, 512; (d) failing to authorize and permit all rest periods in violation of Labor Code §§ 226.7, 516, and 1198; (e) failing to reimburse Plaintiff and similarly aggrieved employees' business expenses in violation of Labor Code § 2802; (f) failing to furnish Plaintiff and similarly aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code §§ 226 and 226.3; (f) failing to pay Plaintiff and similarly aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; (g) failing to maintain accurate records in violation of Labor Code § 1174; (h) failing to pay all wages owed to Plaintiff and similarly aggrieved employees at end of employment in violation of Labor Code §§ 201-202, that arose during the PAGA Period. These allegations are described in the second paragraph of Section I on the previous page.

Upon entry of the Order approving the Settlement, any Aggrieved Employee covered by this Agreement (including you) will be barred from proceeding with any claim under the PAGA released by this Settlement.

IV. SETTLEMENT ADMINISTRATOR

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

You may call the Settlement Administrator, _____ at [ADMINISTRATOR INFO] with any questions.

Settlement checks will be void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to the California State Controller's Office under the unclaimed property laws in the name of the Aggrieved Employee to whom the check was issued. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT B