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individually and on behalf of others
similarly situated and aggrieved

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

DAVID VARGAS, individually, and on behalf of
others similarly situated and aggrieved

Plaintiff,

vs.

SITECARE LANDSCAPE MAINTENANCE,
INC., a California corporation; SITEWORKS
LANDSCAPE, INC., a California corporation; and
DOES 1 through 100, inclusive,

Defendants.

Case No. 21CV003815

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE OF
CLAIMS**

Action Filed: December 9, 2021
Trial Date: None Set

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SITECARE LANDSCAPE MAINTENANCE, INC., a California corporation;

and SITEWORKS LANDSCAPE, INC., a California corporation

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1 This Joint Stipulation of Class Action Settlement Agreement and Release of Claims
2 (“Agreement”) is made and entered into between: (1) Plaintiff David Vargas (“Vargas” or “Plaintiff”)
3 individually and on behalf of all current and former non-exempt, hourly employees working for
4 Defendants Sitecare Landscape Maintenance, Inc. and Siteworks Landscape, Inc. (collectively,
5 “Defendants”) at any time between December 9, 2017 to the earlier of either (i) August 21, 2023 or (ii)
6 the date of preliminary approval of the Settlement (the “Class”); and (2) Defendants, subject to approval
7 from the Court, as provided below.

8 This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and
9 settle the Action (as defined below) and the Released Claims (as defined below), upon and subject to the
10 terms and conditions hereof, as follows:

11 1. DEFINITIONS

12 As used herein, for the purposes of this Agreement only, the following terms shall be defined as
13 set forth below:

14 1.1. “**Action**” refers to the civil action entitled: *Vargas v. Sitecare Landscape*
15 *Maintenance, Inc., et al.*, Alameda County Superior Court Case No. 21CV003815. The Action was filed
16 as a class and representative action.

17 1.2 “**Aggrieved Employees**” refers to all current and former non-exempt hourly
18 employees working for Defendants at any time between October 5, 2020 and the earlier of either (i) August
19 21, 2023 or (ii) the date of preliminary approval of this Settlement.

20 1.3. “**Agreement**” refers to this Joint Stipulation of Class Action Settlement
21 Agreement and Release of Claims, which includes all of the Recitals and the Exhibits attached hereto.

22 1.4. “**Class**” refers to all current and former non-exempt, hourly employees working for
23 Defendants in California at any time between December 9, 2017 to the earlier of either (i) August 21, 2023
24 or (ii) the date of preliminary approval of the Settlement.

25 1.5. “**Class Counsel**” refers to Matthew J. Matern, Joshua D. Boxer, and Sara B.
26 Tosdal of Matern Law Group, PC. For purposes of providing any notices required under this Agreement,
27 Class Counsel shall refer to Sara B. Tosdal, 1330 Broadway, Suite 436, Oakland, California 94612
28 (stosdal@maternlawgroup.com).

1.6. **“Class Member(s)”** refers to any individual that is a member of the Class.

1.7. **“Class Period”** refers to the period of December 9, 2017 to the earlier of either (i) August 21, 2023 or (ii) the date of preliminary approval of the Settlement, as defined in this Agreement. The Class Period is based on a four-year statute of limitations period for state law claims, beginning four years prior to the date on which the Action was filed (December 9, 2021).

1.8. **“Class Representative”** refers to the named Plaintiff in the Action, David Vargas.

1.9. **“Class Representative Service Award”** refers to any payment, subject to Court approval, to the Class Representative from the Gross Settlement Amount in recognition of the efforts and work in prosecuting the Action on behalf of the Class Members.

1.10. **“Complaint”** refers to the Complaint filed on December 9, 2021 in this Action.

1.11. **“Weeks Worked”** refers to any weeks when a Class Member worked for Defendants during the Class Period, as reflected in Defendants’ records.

1.12. **“Defendants”** refers to Sitecare Landscape Maintenance, Inc. and Siteworks Landscape, Inc.

1.13. **“Defendants’ Counsel”** refers to Wilson, Elser, Moskowitz, Edelman & Dicker LLP. For purposes of providing any notices required under this Agreement, Defendants’ Counsel shall refer to Peter C. Catalanotti and Madonna Herman, 655 Montgomery Street, Suite 900, San Francisco, California 94111.

1.14. **“Effective Date”** refers to the 15th day after the date by which the last of the following has occurred: (a) all conditions of Settlement have been satisfied; (b) the Court has entered and filed the Final Approval Order and Judgment; and (c) the time period for appeal of the Judgment has been exhausted without any appeals having been filed, and/or all such appeals have been voluntarily or involuntarily dismissed, and/or the appropriate appellate court or courts have entered a final judgment affirming the Final Approval Order and Judgment of the Court and the final judgment of such appellate court or courts is no longer subject to any further appellate challenge or procedure. The Parties agree that only the Parties and/or Class Members who file a valid and timely Objection maintain the right to appeal.

1.15. **“Final Approval Order”** refers to the final order by the Court approving the Settlement following the Final Approval Hearing.

1 1.16. **“Final Approval Hearing”** refers to the hearing at which the Court will make a
2 final determination whether the terms of the Agreement are fair, reasonable, and adequate for the Class
3 and meet all applicable requirements for Final Approval.

4 1.17. **“Gross Settlement Amount”** refers to the maximum settlement payment
5 Siteworks Landscape, Inc. may be obligated to make in connection with the Settlement or Agreement,
6 which in this case is no more than \$775,000.00. This sum shall include all Individual Settlement Payments
7 made to Class Members, all administration costs, the employees’ share of payroll taxes, the Class
8 Representative Service Award, the LWDA Payment (as defined below), interest, and attorneys’ fees and
9 costs as set forth below. The Gross Settlement Amount shall not include employer owed payroll taxes,
10 which Siteworks Landscape, Inc. pay in addition to funding the Gross Settlement Amount.

11 The Gross Settlement Amount is a material term of this Agreement. To the extent Plaintiff
12 or the Court seeks to require Defendants to pay more than the Gross Settlement Amount as part of this
13 Settlement or Agreement, Defendants shall retain the right, in the exercise of their sole discretion, to
14 nullify the Settlement or Agreement.

15 1.18. **“Individual Settlement Payment”** refers to the amount calculated by the
16 Settlement Administrator to be distributed to each individual Class Member, based on Weeks Worked.
17 The Individual Settlement Payment shall be paid from the Net Settlement Amount and shall include the
18 employee’s share of payroll taxes and withholdings.

19 1.19. **“Judgment”** refers to the final judgment by the Court approving the Settlement.

20 1.20. **“LWDA Payment”** refers to the \$45,000.00 of the PAGA Payment, defined herein
21 *infra* 1.24, to be paid to the California Labor & Workforce Development Agency (“LWDA”) as the
22 LWDA’s share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA.

23 1.21. **“Net Settlement Amount”** refers to the Gross Settlement Amount minus all
24 administration costs, the Class Representative Service Awards, the LWDA Payment, and attorneys’ fees
25 and costs. The Net Settlement Amount shall include all Individual Settlement Payments due to Class
26 Members and Aggrieved Employees, including the employees’ share of payroll taxes. The Net Settlement
27 Amount is the maximum amount that shall be available for distribution to Class Members.
28

1 The Net Settlement Amount is a material term of this Agreement. To the extent Plaintiffs
2 or the Court seeks to require Defendants to pay more than the Net Settlement as part of this Settlement or
3 Agreement, Defendants shall retain the right, in the exercise of their sole discretion, to nullify the
4 Settlement or Agreement.

5 1.22. **“Notice of Class Action Settlement”** refers to the Notice of Class Action
6 Settlement, substantially in the form attached as Exhibit A.

7 1.23. **“Objection”** refers to a timely, written, signed objection by a Class Member who
8 elects to object to the Settlement, substantially in the form detailed in the Notice of Class Action
9 Settlement.

10 1.24. **“PAGA Payment”** refers to a payment out of the Gross Settlement Amount of
11 \$60,000.00, which shall be allocated as \$45,000.00 to the LWDA Payment (defined above, supra 1.19),
12 and as \$15,000.00 to the Net Settlement Amount for distribution to the Class Members.

13 1.25. **“PAGA Period”** means the time period of October 5, 2020 to the earlier of either
14 (i) August 21, 2023 or (ii) the date of preliminary approval of the Settlement, as defined in this Agreement.

15 1.26. **“Parties”** refer to (1) Plaintiff David Vargas, individually and on behalf of all
16 current and former non-exempt, hourly employees working for Defendants in California at any time during
17 the Class Period on the one hand; and, (2) Defendants Sitecare Landscape Maintenance, Inc. and
18 Siteworks Landscape, Inc. on the other hand.

19 1.27. **“Plaintiff”** refers to David Vargas.

20 1.28. **“Preliminary Approval Order”** refers to the order issued and entered by the Court
21 following a Motion for Preliminary Approval of the Settlement and this Agreement.

22 1.29. **“Released Claims”** refers to those claims defined in Section 6 of this Agreement.
23 The Released Claims shall apply to all Class Members who do not file a Request for Exclusion (as defined
24 in this Agreement). The scope of the Released Claims is a material term of this Agreement. To the extent
25 Plaintiff or the Court seek to modify the scope of the Released Claims in order to make it more narrow,
26 Defendants shall retain the right, in the exercise of their sole discretion, to nullify the Settlement or
27 Agreement.
28

1.30. **“Released Parties”** refers to: (i) Defendants Sitecare Landscape Maintenance, Inc. and Siteworks Landscape, Inc.; and (ii) each of Defendants’ respective past and present parents, subsidiaries, and affiliates including, without limitation, any corporation, limited liability company, partnership, affiliated medical entity, trust, foundation, and non-profit entity which controls, is controlled by, or is under common control with Defendants; (iii) the past and present shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing.

1.31. **“Request for Exclusion”** refers to a timely, written, signed opt-out request by someone who otherwise would be a Class Member who elects to be excluded from the Class, substantially in the form attached as Exhibit B to this Agreement.

1.32. **“Settlement”** refers to terms of this Agreement, which includes the Recitals and the Exhibits attached hereto.

1.33. **“Settlement Administrator”** refers to the third party administrator, who has been mutually selected by the Parties, subject to Court approval, to perform the notice, claims administration, and distribution of payment functions further described in this Agreement. The Settlement Administrator shall establish its own employer identification number and file an Internal Revenue Service Form W-9. The Settlement Administrator shall meet all of the requirements to establish a Qualified Settlement Fund (“QSF”) pursuant to U.S. Treasury Regulation Section 468B-1.

1.34. **“Settlement Class”** refers to all Class Members who do not file a timely and valid opt-out Request for Exclusion.

2. PROCEDURAL HISTORY AND RECITALS

2.1. **Causes of Action.** On December 9, 2021, Plaintiff filed the Complaint against Defendants on behalf of the Class. Plaintiff asserts 10 causes of action against Defendants: “(1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Required Meal Periods; (4) Failure to Provide Required Rest Periods; (5) Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties; (6) Failure to Maintain Required Records; (7) Failure to

1 Furnish Accurate Itemized Wage Statements; (8) Failure to Pay All Wages Due to Discharged and
2 Quitting Employees; (9) Unfair and Unlawful Business Practices; and (10) Enforcement Action Pursuant
3 to the Private Attorneys General Act of 2004.” The Complaint seeks unpaid wages, actual damages,
4 statutory damages, monetary damages, interest, statutory penalties, civil penalties, liquidated damages,
5 restitution, declaratory and injunctive relief, equitable relief, pre-judgment interest, and attorneys’ fees
6 and costs.

7 **2.2. The Parties Engaged In Informal, Pre-Mediation Discovery.** The Parties agreed
8 to attend mediation before engaging in formal discovery. In advance of the mediation, Defendant provided
9 a small sample of time and pay data, which Plaintiff’s expert analyzed for the purposes of mediation.
10 Defendant also provided relevant policies and procedures.

11 **2.3. Class Counsel’s Investigation.** Class Counsel investigated the claims against
12 Defendants in the Action, and also analyzed all applicable defenses raised by Defendants. The
13 investigation included review of the above-mentioned documents produced before mediation discovery,
14 interviewing Plaintiff, several conferences between Class Counsel and Defendants’ Counsel and the
15 mediator, and Class Counsel’s analysis of Defendants’ time and pay records in consultation with their
16 retained experts. Class Counsel believes class certification would be appropriate in this Action after formal
17 discovery.

18 **2.4. Defendants’ Denials.** Defendants denied and continue to deny: (a) all of the
19 allegations made by the Class Representative or the Class in the Action; (b) that they violated any
20 applicable laws; (c) that they are liable or owe damages, penalties, or other compensation or remedies to
21 anyone with respect to the alleged facts or claims asserted in the Action; and, (d) that class certification
22 or representative treatment of the Action or any alleged claim is proper. The Court has not made any
23 findings of liability as to Defendants and the Court has not determined that class certification is warranted
24 in this Action.

25 Nonetheless, without admitting or conceding any liability or wrongdoing whatsoever and without
26 admitting or conceding that class certification or representative treatment is appropriate for any purpose
27 other than settlement purposes alone, Defendants have agreed to settle the Action on the terms and
28 conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty of continuing the

1 Action. Any stipulations or statements by Defendants contained in this Agreement are made for settlement
2 purposes only.

3 **2.5. Class Counsel's Evaluation.** Based on Class Counsel's investigation and
4 evaluation, Class Counsel is of the opinion that the terms set forth in this Agreement are fair, reasonable,
5 adequate, and in the best interest of the Class Members. Class Counsel diligently and effectively
6 investigated Plaintiff's claims, drafted the Complaint, interviewed Plaintiff and other relevant percipient
7 witnesses, reviewed and analyzed documents produced, and analyzed Defendants' time and pay records
8 in consultation with their retained experts. Class Counsel concluded that the Settlement reflected in this
9 Agreement is in the best interests of the Class, after reviewing the above-mentioned documents and
10 information, conferring with Defendants' Counsel, and evaluating the risk that further litigation might
11 result in Plaintiff and the Class not recovering anything at all was a very significant factor in determining
12 that this Agreement is fair, reasonable, and adequate.

13 **2.6. The Parties' Intent.** It is the desire of the Parties to fully, finally, and forever
14 settle, compromise, and discharge any and all claims, rights, demands, charges, complaints, causes of
15 action, obligations or liability of any and every kind that were or could have been asserted in the Action,
16 to the extent that such claims arise out of the alleged facts, circumstances, and occurrences underlying the
17 allegations as set forth in the claims in the Complaint in the Action.

18 **2.7. The Parties' Agreement to Cooperate.** The Parties agree to cooperate and to take
19 all steps necessary and appropriate to effectuate all aspects of this Agreement, to obtain a Preliminary
20 Approval Order and Final Approval Order of this Settlement, and to dismiss the Action and claims of
21 Class Members with prejudice upon final approval.

22 **NOW THEREFORE**, in consideration of the covenants and agreements set forth herein, and of
23 the release and dismissal of all Released Claims, the Parties stipulate and agree to the terms and provisions
24 of this Settlement and Agreement, subject to the approval of the Court.

25 **3. NOTICE TO CLASS MEMBERS**

26 **3.1. Settlement Administrator.** The Parties request that the Court appoint Phoenix
27 Class Action Administration Solutions. The Settlement Administrator will be paid an amount from the
28 Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with its "not to

1 exceed” bid submitted to the Court in connection with the Preliminary Approval of the Settlement. All
2 disputes relating to the Settlement Administrator’s performance of its duties, after good-faith efforts by
3 the Parties to first resolve such disputes, will be referred to the Court, if necessary, which will have
4 continuing jurisdiction over this Agreement until all payments and obligations contemplated by this
5 Agreement have been fully completed.

6 **3.2. Class Data for Settlement Administrator.** Within thirty (30) calendar days of the
7 entry of a Preliminary Approval Order of this Agreement, Defendants shall provide to the Settlement
8 Administrator with the following information: (1) name of each Class Member; (2) most current known
9 address of each Class Member; (3) social security number of each Class Member; (4) number of Work
10 Weeks worked in the Class Period; and (5) number of Pay Periods worked in the PAGA Period.

11 **3.3. Confidentiality of Class Member Contact Information and Data.** The contact
12 information is being provided confidentially, and the Settlement Administrator shall treat the information
13 as private and confidential and take all necessary precautions to maintain the confidentiality of contact
14 information of the Class Member. This information is to be used only to carry out the Settlement
15 Administrator’s duties as specified in this Settlement Agreement. The Settlement Administrator shall
16 return the class data to Defendants or confirm its destruction upon completion of the Settlement
17 Administrator’s duties in administering the Settlement.

18 **3.4. Mailing of Notice of Class Action Settlement and Request for Exclusion.** The
19 Settlement Administrator shall mail the Notice of Class Action Settlement, and Request for Exclusion, to
20 Class Members within 14 calendar days of receiving the Class Member data from Defendants. The
21 Settlement Administrator shall send the Notice of Class Action Settlement, and Request for Exclusion to
22 Class Members via First Class U.S. Mail, using the most current, known mailing address for each Class
23 Member based on information provided by Defendants. Upon receipt of this information from
24 Defendants, the Settlement Administrator shall perform a search based on the National Change of Address
25 Database maintained by the United States Postal Service to update and correct any known or identifiable
26 address changes.

27 **3.4.1 Re-mailing of Returned Notices.** Any mailing returned to the Settlement
28 Administrator as undeliverable shall be sent within three (3) business days via First Class U.S. Mail to the

forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall attempt to determine the correct address by again using the National Change of Address Database maintained by the United States Postal Service to update and correct any known or identifiable address changes. Following this procedure, the Settlement Administrator shall perform a single re-mailing via First Class U.S. Mail within 3 business days.

3.4.2 Content of the Notice of Class Action Settlement. The Notice of Class Action Settlement shall be substantially in the form attached as Exhibit A to this Agreement.

3.4.3 Content of the Request for Exclusion. The Request for Exclusion shall be substantially in the form attached as Exhibit B to this Agreement.

3.5. Proof of Mailing. At least five (5) calendar days prior to the Final Approval Hearing, the Settlement Administrator shall provide a declaration of due diligence and proof of mailing with regard to mailing of the Notice of Class Action Settlement to Class Counsel and Defendants' Counsel, which they shall in turn provide to the Court.

4. CLASS MEMBERS' OPTIONS TO RESPOND

4.1. Class Members' Consideration Period. Class Members shall be provided 45 calendar days to exercise any rights with regard to the Settlement, following the postmark date of the initial mailing of the Notice of Class Action Settlement and the Request for Exclusion. Except as specifically provided herein, no Class Member responses of any kind that are postmarked more than 45 calendar days after the initial mailing of Class Notice shall be considered. Responses from Class Members must be postmarked for mail with the U.S. Postal Service. Responses sent by facsimile, email, or other forms of electronic transmission will not be considered.

4.2. Request for Exclusion and Opt-Out Rights. Class Members shall be given the opportunity to opt out of the Settlement.

4.2.1 Opt-Out Procedures. Class Members may opt out of the Settlement by mailing to the Settlement Administrator a Request for Exclusion, substantially in the form attached as Exhibit B. Any such Request for Exclusion must be postmarked not more than 45 calendar days after the postmark date of the initial mailing of the Notice of Class Action Settlement and the Request for Exclusion. To be a valid Request for Exclusion, a Class Member must provide his or her name (and

1 former names, if any, which were used while employed by Defendants), current address, and current
2 telephone number. Any Request for Exclusion that does not include all of the required information or that
3 is not submitted in a timely manner will be deemed null, void, and ineffective. If there is a dispute
4 regarding the timeliness or validity of a Request for Exclusion, the Settlement Administrator shall make
5 the determination, after consultation with Class Counsel and Defense Counsel. Requests for Exclusion
6 from Class Members must be postmarked for mail with the U.S. Postal Service. Requests for Exclusion
7 sent by facsimile, email, or other forms of electronic transmission will not be considered.

8 **4.2.2 Effect of Opt Out.** Any Class Member who opts out of the Settlement may
9 not object to the Settlement, shall not receive any Individual Settlement Payment except for their share of
10 the PAGA portion of the Net Settlement Amount, but will be bound to Section 6.2. If a Class Member
11 submits both a Request for Exclusion and an Objection, the Class Member's Objection will be valid and
12 be deemed to invalidate the Request for Exclusion.

13 Each Class Member who does not opt out of the Settlement shall be bound by the applicable
14 Released Claims provisions in this Agreement, including the Released Claims.

15 **4.3. Objection Rights.** Because the Settlement Class will be certified by the Court,
16 only Class Members who do not opt out of the Settlement shall be entitled to object to the terms of the
17 Settlement.

18 **4.3.1 Objection Procedures.** Class Members' objections to the Settlement or
19 this Agreement must be made using the procedures set forth in the Notice of Class Action Settlement.
20 Any Objection must be sent to the Settlement Administrator and postmarked no later than 45 days after
21 the first postmark date of mailing the Notice of Class Action Settlement. An Objection shall be deemed
22 to be submitted as of the postmarked date. The written Objection must contain: (1) the name and case
23 number of this lawsuit, *Vargas v. Sitecare Landscape Maintenance, Inc.*, Alameda County Superior Court
24 Case No. 21CV003815; (2) the full name, last four digits of their Social Security Number, and current
25 address of the Class Member making the Objection; (3) the specific reason(s) for the Objection; and
26 (4) any and all evidence and supporting papers (including, without limitation, all briefs, written evidence,
27 and declarations) for the Court to consider. Class Members who submit an Objection remain bound by
28 this Agreement.

1 Objections from Class Members must be postmarked for mail with the U.S. Postal Service. Objections
2 sent by facsimile, email, or other forms of electronic transmission will not be considered.

3 **4.3.2 Individuals Who Submit an Objection May Appear by Giving Notice.**

4 Class Members who timely submit an Objection shall have the right to appear at the Final Approval
5 Hearing either in person or through counsel, but must state their intent to do so at the time they submit
6 their written Objection. Class Members may withdraw their Objections at any time.

7 **4.3.3 Waiver of Objection Rights.** Class Members who fail to make Objections
8 in the manner specified in the Notice of Class Action Settlement shall be deemed to have waived any
9 Objections and shall be foreclosed from making any Objection, whether by appeal or otherwise, to this
10 Agreement.

11 **4.4. Proof of Class Members' Responses.** By not later than 75 calendar days after the
12 initial mailing of the Notice of Class Action Settlement and Request for Exclusion, the Settlement
13 Administrator will prepare and submit a declaration attesting to (by number of relevant individuals) its
14 mailing of the Notice of Class Action Settlement, its inability to deliver any mailing due to invalid
15 addresses, and its receipt of valid Requests for Exclusion. Five calendar days prior to the Final Approval
16 Hearing, the Settlement Administrator will prepare a supplemental declaration to submit to the Court, to
17 indicate the number of valid timely claims, objections, and opt out Requests for Exclusion.

18 **4.5. Binding Effect of Settlement.** Although some Class Members might not receive
19 or timely submit the Notice of Class Action Settlement or the Request for Exclusion, as provided under
20 this Settlement and Agreement, due to inability to locate their current address following the procedures
21 set forth in this Agreement, such individuals shall nonetheless be bound by all of the terms of this
22 Settlement and Agreement and the Final Order and Dismissal with Prejudice.

23 **5. DISTRIBUTION OF SETTLEMENT PROCEEDS**

24 **5.1. Gross Settlement Amount.** Defendants agree to pay up to a maximum Gross
25 Settlement Amount of \$775,000.00. The \$775,000.00 Gross Settlement Amount refers to the maximum
26 settlement payment Defendants may be obligated to make in connection with the Settlement or
27 Agreement, and shall include all Individual Settlement Payments made to Class Members, all
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administration costs, the employees' share of payroll taxes, the Class Representative Service Awards, the LWDA Payment, and attorneys' fees and costs.

5.2. **Attorneys' Fees and Costs.** Class Counsel may request—and Defendants agree not to oppose—that the Court approve an attorneys' fees and costs award for (a) attorneys' fees in an amount up to one third (33%) of the Gross Settlement Amount (or \$255,750.00) and (b) reasonable and documented attorney costs in an amount not to exceed \$25,000. Except as provided in this Agreement, Defendants shall have no liability for any other attorneys' fees or costs. Expenses are part of, and deducted from, the Gross Settlement Amount. Any portion of the Attorneys' Fees and Costs not awarded by the Court shall be added to the Net Settlement Amount.

5.2.1 **Approval of Attorneys' Fees and Costs Award Not Material.** The Court's approval of an attorneys' fees or costs award is not a material term of the Settlement or this Agreement. If the Court does not approve or approves only a lesser amount than that requested by Class Counsel for attorneys' fees or costs, the other terms of the Settlement and this Agreement shall still apply. The Court's refusal to approve the attorneys' fees or costs award requested by Class Counsel does not give the Class Representative, the Class Members, or Class Counsel any basis to abrogate the Settlement or this Agreement. Any amount of an attorneys' fees and costs award requested by Class Counsel but unapproved by the Court shall be allocated to the Net Settlement Amount.

5.2.2 **Timing of Payment of Attorneys' Fees and Costs.** The Settlement Administrator shall pay to Class Counsel any approved attorneys' fees and costs award fourteen (14) calendar days after the full funding of the Gross Settlement Amount as set forth in Section 5.1. The Settlement Administrator shall issue an Internal Revenue Service Form 1099 to Class Counsel for any attorneys' fees and costs award payment. Class Counsel shall be solely and legally responsible for paying all applicable taxes on any attorneys' fees and costs award payments and shall indemnify and hold harmless Defendants from any claim or liability for taxes, penalties, or interest arising as a result of the payment.

5.3. **Class Representative Service Awards.** Class Counsel may request—and Defendants agree not to oppose—that the Court approve a Class Representative Service Award of \$5,000.00 for Plaintiff David Vargas. The Class Representative Service Award is for Plaintiff Vargas'

1 additional participation in the Action, including participating in interviews and in the mediation itself.
2 This payment shall not be subject to payroll taxes or withholdings. The Class Representative Service
3 Award is in addition to Plaintiff Vargas' Individual Settlement Payment.

4 **5.3.1 Class Representative Service Award Not Material.** The Court's approval
5 of the Class Representative Service Award is not a material term of the Settlement or this Agreement. If
6 the Court does not approve or approves only a lesser amount than that requested by Class Counsel for the
7 Class Representative Service Award, the other terms of the Settlement and this Agreement shall apply.
8 The Court's refusal to approve the Class Representative Service Award requested by Class Counsel does
9 not give either Class Representative or Class Counsel any basis to abrogate the Settlement or this
10 Agreement. Any amount of the Class Representative Service Award requested by Class Counsel but
11 unapproved by the Court shall be allocated to the Net Settlement Amount.

12 **5.3.2 Timing of Class Representative Service Award.** The Settlement
13 Administrator shall pay to the Class Representative any approved Class Representative Service Award 14
14 calendar days after the initial funding of the Gross Settlement Amount set forth in Section 5.1. The
15 Settlement Administrator shall issue an IRS Form 1099 to the Class Representative for any Class
16 Representative Service Award. The Class Representative shall be solely and legally responsible for paying
17 all applicable taxes on any Class Representative Service Awards and shall indemnify and hold harmless
18 Defendants from any claim or liability for taxes, penalties, or interest arising as a result of the payment.

19 **5.4. Settlement Administration Costs.** Class Counsel intends to request—and
20 Defendants agree not to oppose—that the Court approve reasonable Settlement Administration Costs in
21 accordance with the Settlement Administrator's "not to exceed" bid. Upon completion of administration
22 of the Settlement, the Settlement Administrator shall provide written certification of such completion to
23 Class Counsel and Defendants' Counsel. The Parties agree to cooperate in the settlement administration
24 process and to make all reasonable efforts to control and to minimize settlement administration costs.

25 **5.5. PAGA Payment.** The Parties will seek approval for a Private Attorneys General
26 Act ("PAGA") payment out of the Gross Settlement Amount of \$60,000.00, which shall be allocated as
27 \$45,000.00 for the LWDA Payment, and as \$15,000.00 to the Net Settlement Amount for distribution to
28 Aggrieved Employees.

1 **5.5.1 Modification of the PAGA Payment Not Material.** The Court's
2 reduction or increase of a LWDA Payment is not a material term of the Settlement or this Agreement. If
3 the Court approves only a lesser amount or a higher amount than that requested by Class Counsel for the
4 PAGA Payment, the other terms of the Settlement and this Agreement shall apply. The Court's reduction
5 or increase of the PAGA Payment requested by Class Counsel does not give the Class Representative or
6 Class Counsel any basis to abrogate the Settlement or this Agreement.
7 However, the Court's approval of a PAGA Payment is a material term of the Settlement or this
8 Agreement. If the Court does not approve a PAGA Payment set forth in this Agreement, then the PAGA
9 Payment shall be made in the amount required by the Court. If the Court requires the PAGA Payment to
10 be higher than as stated in this Agreement, the additional funds for the PAGA Payment shall be taken
11 from the Gross Settlement Amount. Thus, the Gross Settlement Amount shall not be increased in the
12 Court requires a larger PAGA Payment.

13 **5.6. Individual Settlement Payments from the Net Settlement Amount.** This
14 Settlement shall be a non-reversionary Settlement. Each Class Member who does not opt out of the
15 Settlement shall be entitled to an Individual Settlement Payment consisting of their share of the Net
16 Settlement Amount, in accordance with the formula set forth below. Class Members who opt out shall
17 nonetheless be entitled to receive their respective share of the PAGA payment.

18 **5.6.1 Individual Settlement Calculations and Payments.** Each Class Member
19 will be eligible to receive a portion of the Net Settlement Amount in accordance with the following
20 formula:

21 Each Class Member's potential share of the Net Settlement Amount will be calculated by
22 dividing the number of Weeks Worked by the Class Member by all Weeks Worked during
23 the Class Period by all Class Members, multiplied by the Net Settlement Amount [*i.e.*,
24 (individual Weeks Worked ÷ total Weeks Worked by Class Members) x Net Settlement
Amount].

25 The PAGA portion of the Net Settlement Amount shall be distributed to aggrieved employees based on
26 number of workweeks worked during the PAGA period, beginning October 5, 2020 (as one year and
27 sixty-five days preceding the filing of the original Complaint) through August 21, 2023. Class Members
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1 who opt out of the class portion of the Settlement and worked during the PAGA period will receive their
2 respective share of the PAGA portion regardless of opting out of the class portion of the settlement.

3 **5.6.2 Disputes Regarding Weeks Worked.** The Notice of Class Action
4 Settlement will list each Class Member's number of Weeks Worked, for purposes of determining the
5 Individual Settlement Payment. If a Class Member disputes the number of Weeks Worked on the Notice
6 of Class Action Settlement, the Class Member must produce, by no later than fourteen (14) calendar days
7 from the date the Notice of Class Action Settlement is postmarked, evidence to the Settlement
8 Administrator showing that such information is inaccurate. All disputes will be decided within seven (7)
9 calendar days from the date the dispute is received by the Settlement Administrator. The Settlement
10 Administrator shall have the authority to determine the outcome of any disputes, but may contact Class
11 Counsel and/or Defendants' Counsel to seek their input.

12 **5.7. Distribution of Individual Settlement Payments.** Each Class Member's portion
13 of the Net Settlement Amount shall be distributed as one check.

14 **5.7.1 Settlement Checks.** The settlement check shall be for the amount of each
15 Class Member's Individual Settlement Payment. The check will include language indicating that
16 endorsing and cashing the check will constitute a release of claims under the California Labor Code,
17 California Unfair Competition Law, and PAGA, for any and all claims asserted or that could have been
18 asserted based on the facts alleged in the Action. The language to be included will be substantially similar
19 to the following:

20 My signature or cashing of this check constitutes a full and complete release of Sitecare
21 Landscaping Maintenance, Inc., Siteworks Landscape, Inc., and all of their current or
22 former subsidiary or affiliated entities, and their current or former officers, directors, and
23 employees, for any and all claims asserted or that could have been asserted based on the
24 facts alleged in the operative Second Amended Complaint in the lawsuit entitled *Vargas v.*
25 *Sitecare Landscaping Maintenance, Inc.*, pending in Alameda County Superior Court,
26 Case No. 21CV003815, including the claims brought under the California Labor Code,
27 California Unfair Competition Law, or PAGA, arising during my employment at any time
28 between December 9, 2017 to the earlier of either (i) August 21, 2023 or (ii) the date of
preliminary approval of the Settlement.

1 **5.8. Timing of Individual Settlement Payments.** The Settlement Administrator shall
2 issue the distribution of the Individual Settlement Payments no later than fourteen (14) calendar days after
3 the funding of the Gross Settlement Amount.

4 **5.9. Allocation of Individual Settlement Payments.** Each Class Member's Individual
5 Settlement Payment will be characterized as 80% Form 1099 income and 20% Form W-2 income, to
6 reflect that 80% of the payment will account for penalties and interest, while 20% will account for unpaid
7 wages. In accordance with applicable tax laws, required tax withholdings and payroll deductions will be
8 taken from each Individual Settlement Payment for the portion allocated to Form W-2 income and remitted
9 to the appropriate taxing authorities. The Settlement Administrator shall issue any necessary IRS Form
10 1099 and Form W-2 statements to Class Members for their respective Individual Settlement Payments.
11 Class Members shall be solely and legally responsible for paying all other applicable taxes on their
12 respective Individual Settlement Payments and shall indemnify and hold harmless Defendants from any
13 claim or liability for taxes, penalties, or interest arising as a result of the payments. In allocating the
14 Individual Settlement Payments, the Parties agree that, pursuant to applicable law, all payments for wages
15 shall be subject to payroll tax withholdings and a Form W-2, while all payments for penalties shall not be
16 subject to payroll tax withholdings and will be recorded on a Form 1099.

17 **5.9.1 Allocation of Individual Settlement Payment Not Material.** The Court's
18 approval of the allocation of the Individual Settlement Payment for Form 1099 income and Form W-2
19 income is not a material term of the Settlement or this Agreement. If the Court does not approve or
20 approves a different allocation of the Individual Settlement Payments, the other terms of the Settlement
21 and this Agreement shall apply. The Court's refusal to approve the allocation for the Individual Settlement
22 Payments requested by the Parties does not give the Parties any basis to abrogate the Settlement or this
23 Agreement.

24 **5.9.2 Undeliverable or Uncashed Checks.** Any settlement checks distributing
25 Individual Settlement Payments returned to the Settlement Administrator as undeliverable shall be sent
26 within 5 calendar days via First Class U.S. Mail to the forwarding address affixed thereto. If no forwarding
27 address is provided, the Settlement Administrator shall attempt to determine the correct address using the
28 National Change of Address Database maintained by the United States Postal Service, and it shall then

perform a re-mailing within 5 calendar days. Funds from uncashed or returned checks will be distributed to a *cy pres*, Legal Aid at Work, a 501(c)(3) non-profit organization.

5.10. **Tax Payment Considerations.** Class Counsel, Defendants' Counsel, Defendants, and the Settlement Administrator are not giving any tax advice in connection with the Settlement or any payments to be made pursuant to this Agreement.

5.11. **No Tax Advice or Liability.** Each Class Member agrees to indemnify, and to hold harmless, Defendants from any liability for taxes, fees, costs, or assessments resulting from his or her failure to timely pay taxes, interest, fees, or penalties owed.

5.12. **No Impact on Contributions to Employee Benefit Plans.** None of the payments made pursuant to the Settlement and this Agreement shall be considered to alter the terms or to grant any rights to additional payments under any employee benefit plans. None of the payments made pursuant to the Settlement and this Agreement shall be considered for purposes of determining eligibility for, vesting or participation in, or contributions to any benefit plan, including, without limitation, all plans subject to the Employee Retirement and Income Security Act of 1974 ("ERISA"). Any distribution of payments to Plaintiff or Class Members shall not be considered as a payment of wages or compensation under the terms of any applicable benefit plan and shall not affect participation in, eligibility for, vesting in, the amount of any past or future contribution to, or level of benefits under any applicable benefit plan. Any amounts paid will not impact or modify any previously credited hours of service or compensation taken into account under any bonus or incentive plan, benefit plan sponsored or contributed to by Defendants or any jointly-trusted benefit plan, or for purposes of calculating the regular rate of pay. For purposes of this Agreement, "benefit plan" means each and every "employee benefit plan," as defined in 29 U.S.C. Section 1002(3), and, even if not thereby included, any 401(k) plan, bonus, pension, stock option, stock purchase, stock appreciation, welfare, profit sharing, retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred compensation, or any other similar benefit plan, practice, program, or policy.

6. RELEASES

6.1. **Release by Class Members.** By operation of the entry of the Final Approval Order and judgment, each Class Member, and each of their respective executors, administrators, representatives,

agents, heirs, successors, assigns, trustees, spouses, or guardians, will release Defendants and each of the Released Parties of and from any and all claims, rights, demands, charges, complaints, causes of action, obligations, or liability of any and every kind between December 9, 2017 to the earlier of either (i) August 21, 2023 or (ii) the date of preliminary approval of the Settlement, for any and all claims that were raised or could have been raised based on the factual allegations made in the Complaint through final approval of the Settlement. This includes but is not limited to: (1) failure to pay minimum wages; (2) failure to pay overtime wages at the regular rate of pay; (3) failure to provide required meal periods; (4) failure to provide required rest periods; (5) failure to indemnify employees for necessary expenditures incurred in discharge of duties; (6) failure to maintain required records; (7) failure to furnish accurate itemized wages statements; (8) failure to pay all wages due to discharged and quitting employees; (9) PAGA claims for civil penalties due to any Labor Code violations by Defendants arising out of or related to events alleged in the Complaint including, but not limited to, Labor Code sections 200, 201, 202, 203, 204, 210, 221, 225.5, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698-2699.5, and 2802; (10) claims brought under Business & Professions Code section 17200 *et seq.* including, but not limited to, all claims for unfair, unlawful and harmful conduct to class members, the general public and Defendants' competitors and claims of unlawfully gaining an unfair advantage over other businesses; (11) any and all claims arising out of alleged violations of the California Labor Code, including sections 200, 201, 202, 203, 204, 210, 221, 225.5, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698-2699.5, and 2802, and California Industrial Welfare Commission Wage Order No. 4-2001; (12) penalties of any nature, interest, or attorneys' fees and costs arising out of any claims that were raised or could have been raised based on the factual allegations made in the operative Second Amended Complaint through final approval of the Settlement; and (13) any other claims that were raised or could have been raised based on the factual allegations made in the Complaint through final approval of the Settlement.

6.2 Release by Aggrieved Employees. All Aggrieved Employees, whether or not they opt out of the Settlement Class, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released

Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, during the PAGA Period, based on the facts alleged in the Complaint and the PAGA Notice.

6.3. **Additional Release by Class Representative.** In addition to the above release applicable to the Class Members, the Class Representative also generally releases any and all claims against Defendants and each of the Released Parties. This general release includes any and all claims arising from the employment relationship with Defendants or any Released Party, including, without limitation, claims for wrongful termination, discrimination, harassment, or retaliation pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000 *et seq.*, the California Fair Employment and Housing Act, Cal. Gov't Code Section 12900 *et seq.*, or the California Labor Code. This general release by the Class Representative also includes a waiver of California Civil Code Section 1542. The Class Representative expressly waives all rights provided by California Civil Code Section 1542, or other similar statutes, that the Class Representative may have against Defendants and each of the Released Parties. California Civil Code Section 1542 states:

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

6.4. **Class Representative Acknowledgements.** The Class Representative acknowledges that he has read this Agreement in its entirety, including the above language from the California Civil Code, and that they fully understand both this Agreement and the California Civil Code section. By executing this Agreement, Class Representative expressly waives any benefits and rights granted pursuant to California Civil Code Section 1542 or any statute, rule, or principle of common law or equity, in any jurisdiction, that is similar, comparable, or equivalent, in whole or in part, to California Civil Code Section 1542. The Class Representative acknowledges and agree that this knowing and voluntary waiver is an essential and material term of this Agreement, and the Agreement would not have been entered into without such a waiver.

6.5. **Injunction from Pursuing Released Claims.** As part of the preliminary approval of the Settlement, Class Members shall be enjoined from filing, initiating, or continuing to prosecute any actions, claims, complaints, or proceedings in any court, or with the Department of Labor Standards

1 Enforcement (“DLSE”), or with the LWDA, or the United States Department of Labor (“DOL”), or with
2 any other entity regarding the Released Claims.

3 This Settlement is conditioned upon the release by the Settlement Class as described herein, and
4 upon covenants by the Settlement Class that they will not prosecute any actions, lawsuits, proceedings,
5 complaints, or charges brought individually by the DLSE, LWDA, DOL, or by any other agency, persons,
6 or entity in any court or before any administrative body related to the Released Claims, nor will the
7 Settlement Class contest or interfere with efforts by Defendants to oppose any attempt to bring such
8 released claims against Defendants.

9 **6.6. Acknowledgement of Binding Terms of the Settlement, Despite Other**
10 **Potential Claims.** Class Counsel, the Class Representative, and the Settlement Class acknowledge that
11 they may hereafter discover facts or law different from, or in addition to, the facts or law they know or
12 believe to exist with respect to the Released Claims. The Settlement Class nonetheless agrees that this
13 Agreement and the Released Claims contained in it shall be and remain effective in all respects
14 notwithstanding such different or additional facts or law regarding such Released Claims. These releases
15 do not include any claims that cannot be waived as a matter of law, but the Settlement Class agrees that
16 they will not accept any monetary recovery or benefit from any proceedings relating to any such claims.

17 **6.7. No Admission of Liability.** By entering into this Agreement, Defendants in no
18 way admit any violation of law or any liability whatsoever to Class Members, individually or collectively,
19 and expressly deny all such liability. Neither this Agreement, nor any other Settlement documents, shall
20 be offered in any case or proceeding as evidence of any admission by Defendants of any liability on any
21 claim for damages, penalties, restitution, or any other relief. Likewise, by entering into this Agreement,
22 Defendants in no way admit to the suitability of this case for class action, collective action, or
23 representative action litigation, other than for purposes of Settlement. Rather, Defendants enter into this
24 Agreement to avoid further protracted litigation and to resolve and to settle all disputes with the Settlement
25 Class.

26 The Parties understand and agree that this Agreement and all exhibits thereto are settlement
27 documents and shall be inadmissible for any purpose in any proceeding, except an action or proceeding
28 to approve, interpret, or enforce the terms of this Agreement. The Parties agree that, to the extent permitted

1 by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis
2 for an injunction against any action, suit, or other proceeding that may be instituted, prosecuted, or
3 attempted in breach of this Agreement.

4 **7. SETTLEMENT APPROVAL PROCEDURE**

5 **7.1. Preliminary Approval.** Plaintiff shall promptly submit to the Court a Motion for
6 Preliminary Approval of class action settlement. This motion shall seek an order to preliminarily approve
7 the proposed Settlement according to the terms in this Agreement and provide for the Notice of Class
8 Action Settlement and the Request for Exclusion, to be sent to Class Members as specified in this
9 Agreement. This motion shall include the bases for the Gross Settlement Amount and why the amount is
10 reasonable in light of the facts and controlling authorities pertaining to the claims alleged in the Complaint.
11 The motion shall also be accompanied by signed declarations by Class Counsel, discussing the risks of
12 continued litigation and the decision that the best interests of Plaintiff and the Class Members are served
13 by the terms of this Agreement.

14 **7.2. Effect of Failure to Obtain Preliminary Approval.** If this Settlement or
15 Agreement or a substantially similar settlement mutually agreed to by the Parties is not preliminarily
16 approved, the Action shall proceed as if no settlement had been attempted and revert back to its prior
17 procedural posture. The Parties may, however, jointly agree to seek reconsideration of the ruling on the
18 Settlement or Court approval of a renegotiated settlement.

19 **7.3. Final Approval.** Plaintiff shall submit to the Court a Motion for Final Approval
20 Order. The motion shall request the entry of a Final Approval Order, which shall include findings and
21 orders: (a) approving the Settlement and the Agreement; (b) adjudging the terms to be fair, reasonable,
22 and adequate; (c) reciting the release terms in full; (d) directing that the Settlement terms and provisions
23 be carried out; and (e) retaining jurisdiction to oversee administration and enforcement of the terms of this
24 Agreement and the Court's orders.

25 **7.4. Motion for Attorneys' Fees and Costs Award.** Concurrent with the filing of the
26 Motion for Final Approval, Class Counsel shall file a motion for Court approval of an attorneys' fees and
27 costs award in the amount of (a) up to one-third (33%) of the Gross Settlement Amount (or \$255,750.00)
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1 and (b) verified reasonable costs not to exceed \$25,000. Defendants will not oppose the motion provided
2 it is consistent with this paragraph. Defendants will not be required to support such a motion.

3 **7.5. Entry of Judgment.** At the final approval hearing, the Parties shall request that
4 the Court, among other things: (a) enter final judgment in accordance with this Agreement and without
5 further fees or costs to any party except as expressly set forth in this Agreement; (b) approve this
6 Agreement as fair, reasonable, adequate, and binding on all members of the Settlement Class; (c) enter an
7 order as to Class Counsel's request for an attorneys' fees and costs award; (d) enter an order as to the
8 request for the Class Representative Service Award; and, (e) enter an order permanently enjoining all
9 members of the Settlement Class from pursuing or seeking to reopen claims that have been released by
10 this Agreement.

11 **7.6. Effect of Failure to Obtain Final Judgment.** In the event the Court fails to enter
12 final judgment in accordance with this Agreement, or such final judgment is vacated or reversed, the
13 Action shall proceed as if no settlement had been attempted and revert back to its prior procedural posture.
14 The Parties may, however, jointly agree to seek reconsideration or appellate review of the ruling or Court
15 approval of a renegotiated settlement.

16 **7.7. Waiver of Appeal Rights.** By accepting this Settlement, authorizing the dismissal
17 of the Action with prejudice, and upon final approval of the settlement being granted, the Class
18 Representative and Class Counsel hereby waive any and all rights they may have to appeal any judgment,
19 ruling, or order made by the Court in this Action, including, without limitation, any order granting final
20 approval of this Settlement or dismissing the Action with prejudice. This includes all rights to any post-
21 judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment,
22 a motion for new trial, and any extraordinary writ. The Judgment therefore will become nonappealable at
23 the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal,
24 appellate proceedings, or post-judgment proceedings. If an appeal is taken from the Judgment, the time
25 for consummation of the Settlement (including making payments under the Settlement) will be suspended
26 until such time as their appeal is finally resolved and the Judgment becomes final.
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1 **8. MISCELLANEOUS**

2 8.1. **Interim Stay of Proceedings.** The Parties agree to refrain from further litigation,
3 except such proceedings necessary to implement and to obtain a Preliminary Approval Order and Final
4 Approval Order of the terms of the Agreement. If the Settlement is not finally approved, the Parties agree
5 that they will revert to their positions in the lawsuit prior to the time the Settlement was reached, and no
6 agreements set forth in this Agreement or any documents generated or orders issued related to the
7 Settlement will be admissible in any future proceeding in this or any other action.

8 8.2. **Parties' Authority.** The signatories hereto represent that they are fully authorized
9 to enter into this Agreement and are fully authorized to bind the Parties to all terms stated herein. It is
10 agreed that Class Members are so numerous that it is impossible or impractical to have each Class Member
11 execute this Agreement. It is agreed that this Agreement may be executed on behalf of Class Members by
12 Class Representative and Class Counsel.

13 8.3. **Entire Agreement.** This Agreement, which includes the Definitions, Recitals, and
14 all Exhibits attached hereto, constitutes the entire agreement between the Parties with regard to the subject
15 matter contained herein, and all prior and contemporaneous negotiations and understandings between the
16 Parties shall be deemed merged into this Agreement.

17 8.4. **Materiality of Terms.** The Parties have arrived at this Agreement as a result of
18 arm's-length negotiations. Where stated in this Agreement, certain terms are material and revision of
19 these material terms will allow Defendants the option to void this Agreement.

20 8.5. **Counterparts.** This Agreement may be executed in counterparts, and when each
21 party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
22 and when taken together with other signed counterparts, shall constitute one signed Agreement, which
23 shall be binding upon and effective as to all Parties.

24 8.6. **Facsimile or Scanned Signatures for This Agreement.** Any party may sign and
25 deliver this Agreement by signing on the designated signature block and transmitting that signature page
26 via facsimile or as an attachment to an e-mail to counsel for the other party. Any signature made and
27 transmitted by facsimile or as an attachment to an e-mail for the purpose of executing this Agreement shall
28

1 be deemed an original signature for purposes of this Agreement and shall be binding upon the party who
2 transmits the signature page.

3 8.7. **Binding Effect.** This Agreement shall be binding upon the Parties and, with respect
4 to the Class Representative, Class Members, their spouses, children, representatives, heirs, administrators,
5 executors, beneficiaries, conservators, attorneys, and assigns.

6 8.8. **Waivers and Modifications to Be in Writing.** No waiver, modification, or
7 amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval
8 of this Agreement, shall be valid or binding, unless in writing, signed by or on behalf of all Parties and
9 then only to the extent set forth in such written waiver, modification, or amendment, subject to any
10 required Court approval. Any failure by any Party to insist upon the strict performance by the other Party
11 of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same
12 provisions or of any of the other provisions of this Agreement, and such Party, notwithstanding such
13 failure, shall have the right thereafter to insist upon the specific performance of any and all of the
14 provisions of this Agreement. The time periods and dates provided in this Agreement with respect to
15 giving of notices and hearings are subject to Court approval and modification by the Court or by written
16 stipulation of Class Counsel and Defendants' Counsel.

17 Any notice to be given pursuant to this Agreement shall be made by email and overnight delivery to Class
18 Counsel or Defendants' Counsel. If Class Members have questions about this Agreement or their Individual
19 Settlement Payments, they must contact Class Counsel, rather than Defendants. Defendants shall have no
20 obligation to respond to communications by Class Members.

21 8.9. **Construction.** The determination of the terms and conditions of this Agreement
22 has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this
23 Agreement, and the terms and conditions of this Agreement are not intended to be, and shall not be,
24 construed against any party by virtue of draftsmanship.

25 8.9.1 **Exhibits Incorporated by Reference.** The terms of this Agreement
26 include the terms set forth in any attached exhibit, which are incorporated by this reference as though fully
27 set forth herein. Any exhibit to this Agreement is an integral part of the Settlement.
28

1 8.9.2 **Captions.** The captions or headings of the sections and paragraphs
2 of this Agreement have been inserted for convenience of reference only and shall have no effect upon the
3 construction or interpretation of any part of this Agreement.

4 8.9.3 **Invalidity of Any Provision.** Before declaring any provision of this
5 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent
6 possible consistent with applicable precedents so as to render all provisions of this Agreement valid and
7 enforceable.

8 8.10. **Further Acts and Cooperation Between the Parties.** The Parties shall cooperate
9 fully with each other and shall use their best efforts to obtain the Court's approval of this Agreement and
10 all of its terms. Each of the Parties, upon the request of another, agrees to perform such further acts and
11 to execute and to deliver such other documents as are reasonably necessary to carry out the provisions of
12 this Agreement.

13 8.11. **No Prior Assignments or Undisclosed Liens.** The Class Representative and Class
14 Counsel represent and warrant that they have not assigned, transferred, conveyed, or otherwise disposed
15 of, or purported to assign, transfer, convey, or otherwise dispose of, any Released Claims or the attorneys'
16 fees and costs award to be paid pursuant to this Agreement. The Class Representative and Class Counsel
17 further represent and warrant that there are not any liens or claims against any of the amounts to be paid
18 by Defendants pursuant to this Agreement. The Class Representative and Class Counsel agree to defend,
19 to indemnify, and to hold Defendants harmless from any liability, losses, claims, damages, costs, or
20 expenses, including reasonable attorneys' fees, resulting from a breach of these representations or from
21 any lien or assignment.

22 8.12. **Waiver of Right to Object by the Class Representative.** The Class
23 Representative agrees to sign this Agreement, and by signing this Agreement, the Class Representative is
24 thereby bound by the terms of this Agreement. The Class Representative further agrees that he shall not
25 object to any of the terms of this Agreement.

26 8.13. **No Solicitation of Objections.** The Parties further represent and warrant that they
27 have not and will not solicit, encourage, or assist in any fashion any effort by any entity or person to object
28 to or to seek exclusion from the Settlement set forth in this Agreement.

1 8.14. **Discovery of Confidential Documents and Information.** Class Counsel agree
2 that they will destroy all confidential documents and information provided to them by Defendants within
3 60 calendar days after the completion of the administration of the Settlement. Class Counsel further agrees
4 that none of the documents and information provided to them by Defendants shall be used for any purpose
5 other than prosecution of this Action or the defense or prosecution of a malpractice action.

6 8.15. **No Tax Advice.** Neither Class Counsel, Defendants' Counsel, or Defendants
7 intend anything contained in this Settlement or Agreement to constitute advice regarding taxes or
8 taxability, nor shall anything in this Settlement or Agreement be relied upon as such within the meaning
9 of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended) or otherwise.

10 8.16. **No Media Announcements.** Neither side shall make any public statements to the
11 news, print, electronic, or Internet media concerning the Settlement, and both sides shall decline to respond
12 to media inquiries concerning the Settlement. Class Counsel shall not publicize the settlement in their
13 marketing materials, website, or other advertising media.

14 8.17. **Continuing Jurisdiction.** The Court shall retain jurisdiction over the
15 implementation of this Agreement as well as any and all matters arising out of, or related to, the
16 implementation of this Agreement and Settlement. The Court shall not have jurisdiction to modify the
17 terms of the Agreement without the consent of all of the Parties.

18 8.18. **Disputes.** If the Parties have a dispute with regard to the language of this
19 Agreement, they agree to first attempt to resolve the dispute informally through good-faith negotiations,
20 but if those efforts are unsuccessful, they agree to mediate any such dispute. The Parties will split the costs
21 of the mediator, and all parties will bear their own fees and costs.

22 //

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24 //

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1 8.19. **Governing Law.** This Settlement and Agreement was made and entered into in
2 the State of California. All terms of this Agreement shall be governed by and interpreted according to the
3 substantive laws of the State of California and the procedural laws of the United States of America.

4 **SO AGREED AND STIPULATED:**

5 DATED: August __, 2024

PLAINTIFF DAVID VARGAS

6 By: 
7 David Vargas (Aug 6, 2024 18:55 PDT)
8 David Vargas

9 DATED: August __, 2023

DEFENDANTS SITECARE LANDSCAPE
10 MAINTENANCE, INC.; SITEWORKS
11 LANDCAPE, INC.

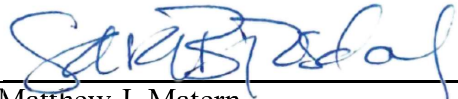
12 By: _____

13 Print Name: _____

14 Title: _____

15
16 DATED: August 21, 2023

MATERN LAW GROUP

17 By: 
18 Matthew J. Matern
19 Joshua D. Boxer
20 Sara B. Tosdal

Attorneys for Plaintiff and the Class

21 DATED: August __, 2023

22 WILSON, ELSER, MOSKOWITZ, EDELMAN &
23 DICKER LLP

24 By: _____
25 Peter C. Catalanotti
26 Madonna Herman
27 Saima Aslam
28

1 8.19. **Governing Law.** This Settlement and Agreement was made and entered into in
2 the State of California. All terms of this Agreement shall be governed by and interpreted according to the
3 substantive laws of the State of California and the procedural laws of the United States of America.

4 **SO AGREED AND STIPULATED:**

5 DATED: August __, 2023

PLAINTIFF DAVID VARGAS

6 By: _____
7 David Vargas

8
9 DATED: ~~August __, 2023~~

10 September 25, 2023

DEFENDANTS SITECARE LANDSCAPE
MAINTENANCE, INC.; SITEWORKS
LANDSCAPE, INC.

11 By: _____

12
13 Print Name: _____

Stephen DeBelis

14 Title: _____

VICE PRESIDENT

15
16 DATED: August 21, 2023

MATERN LAW GROUP

17 By: _____

18 Matthew J. Matern
19 Joshua D. Boxer
20 Sara B. Tosdal

Attorneys for Plaintiff and the Class

21 DATED: ~~August __, 2023~~
22 September 27, 2023

WILSON, ELSE, MOSKOWITZ, EDELMAN &
DICKER LLP

23 By: _____

24 Peter C. Catalanotti
25 Madonna Herman
26 Saima Aslam

EXHIBIT A

NOTICE OF SETTLEMENT OF CLASS ACTION

David Vargas v. Sitecare Landscape Maintenance, Inc. & Siteworks Landscape, Inc.

Alameda County Superior Court

Case No. 21CV003815

To: All current and former non-exempt, hourly employees working for Sitecare Landscape Maintenance, Inc. and/or Siteworks Landscape, Inc. in California at any time between December 9, 2017 through [Insert earlier of August 21, 2023 or the date of Preliminary Approval].

THIS NOTICE is of a proposed Settlement of a class action and representative action lawsuit in which you may be entitled to receive money (“Settlement”). Your rights may be affected by the legal proceedings in this action. Please review this notice carefully.

You will automatically receive a share of the Individual Settlement Payment. If you do not want to receive a share of the Individual Settlement Payment, you must affirmatively opt out of this Settlement by completing and submitting a timely and valid Request for Exclusion.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

YOU MAY DO NOTHING

If you take no further action, you will remain a Class Member, represented by Class Counsel.

You will receive a share of the Individual Settlement Payment and will be bound by the release provisions of the Settlement Agreement with respect to the California Labor Code, California Industrial Welfare Commission Wage Orders, California Private Attorneys General Act of 2004 under California Labor Code §§ 2968, *et seq.*, and California Unfair Competition Law under California Business and Professions Code §§ 17200, *et seq.*

As a Class Member, you will not be charged for the services of Class Counsel.

YOU MAY EXCLUDE YOURSELF

You may submit a Request for Exclusion to “opt out” of this Settlement. If you do not want to remain a Class Member, you must submit the enclosed Request for Exclusion to “opt out” of the Settlement.

If you submit a timely and valid Request for Exclusion, you will **not** receive **any** Individual Settlement Payment from the Class portion of the settlement but **will** receive a portion of the settlement allocated to PAGA.

If you opt out, you may not object to the Settlement and will not be bound by the release provisions in the Settlement Agreement. You will be free to pursue any claims you may have against Defendants on your own behalf, but Class Counsel will not represent you.

In order to exclude yourself from the Class, you must submit the completed Request for Exclusion to the Settlement Administrator, Phoenix Class Action Administration Solutions, so that it is **postmarked** no later than **[INSERT DATE]**. **If you do not comply with these procedures and the deadline for exclusions, you will lose any opportunity to exclude yourself from the Settlement, and your rights will be determined in this lawsuit by the Settlement Agreement if it is approved by the Court and you may not recover under any other individual settlement agreement with respect to the Release of Claims, including California Labor Code, California Industrial Welfare Commission Wage Orders, California Private Attorneys General Act of 2004 under California Labor Code §§ 2968, *et seq.*, and California Unfair Competition Law under California Business and Professions Code §§ 17200 *et seq.***

**YOU MAY
OBJECT**

You may object to the Settlement by timely submitting a written objection.

If the Court grants final approval of the Settlement despite your objection, you will receive a share of the Individual Settlement Payment and will be bound by the release provisions of the Settlement Agreement with respect to the California Labor Code, California Industrial Welfare Commission Wage Orders, California Private Attorneys General Act of 2004 under California Labor Code §§ 2968, *et seq.*, and California Unfair Competition Law under California Business and Professions Code §§ 17200 *et seq.*

In order to make a timely and valid objection, you must complete and submit a written objection and send it to the Settlement Administrator, Phoenix Class Action Administration Solutions, **postmarked** no later than **[INSERT DATE]**. If you wish to appear at the Settlement Hearing and be heard orally in support of, or in opposition to the Settlement, you must state so in the objection. **If you do not comply with the procedures for submitting an objection, as set forth in this notice below, and the deadline for objections, you will lose any opportunity to have your objection considered by the Court or otherwise to contest the approval of the Settlement or to appeal from any orders or judgments entered by the Court in connection with the Proposed Settlement.**

PLEASE NOTE: If you do not wish to be represented by Class Counsel, you may hire your own attorney at your own expense. Your attorney must send a Notice of Appearance to the Settlement Administrator, Phoenix Class Action Administration Solutions, so that it is **postmarked** on or before **[INSERT DATE]**. You will be responsible for any attorneys' fees and costs charged by your attorney.

I. Why should I read this Notice?

This Notice outlines a Settlement for a class action and representative action lawsuit. If the Court approves the proposed Settlement, your legal rights may be affected. This Notice, which has been approved by the Court, is only a summary. A more detailed Joint Stipulation of Class Action Settlement and Release of Claims ("Settlement Agreement") is on file with the Court, where it is available for your review.

II. What is this lawsuit about?

A lawsuit entitled *David Vargas v. Sitecare Landscape Maintenance, Inc., et al.* is now pending in Alameda County Superior Court, Case No. 21CV003815 (the "Lawsuit"). Plaintiff David Vargas

(“Plaintiff”) alleged claims against Defendants Sitecare Landscape Maintenance, Inc. and Siteworks Landscape, Inc. (collectively, “Defendants”) under the California Labor Code and the California Unfair Competition Law.

Plaintiff brought this Lawsuit as a class action on behalf of himself and other similarly situated employees and “aggrieved” employees, and is claiming that Defendants failed to pay minimum, overtime, and double time wages; failed to pay wages for work performed off-the-clock; failed to provide meal and rest periods; failed to provide reimbursements for necessary expenditures; failed to provide accurate wage statements; failed to maintain required records; failed to timely pay wages during employment; and failed to pay final wages upon termination. Plaintiff seeks monetary recovery on behalf of the Class for the alleged violations, along with penalties, interest, restitution, costs and attorneys’ fees.

Defendants contend that they have complied with all laws and deny the allegations in this Lawsuit. The Court has not formed any opinions concerning the merits of the Lawsuit, and the Court has not ruled on any of the claims. The Court also has not yet ruled that the Lawsuit satisfies the requirements for a class action. This Settlement is intended to resolve the Lawsuit in order to avoid the uncertainties associated with subsequent decisions to be issued by the Court.

III. Who is covered by the class action lawsuit and the proposed Settlement?

A. The Settlement Class. The Court granted preliminary approval of the Settlement and authorized this Notice. The Court defined the “Settlement Class” as including all current and former non-exempt, hourly employees working for Sitecare Landscape Maintenance, Inc. and Siteworks , Inc. in California at any time between December 9, 2017 through [insert earlier of August 21, 2023 or date of Preliminary Approval], who did not file a timely and valid opt-out Request for Exclusion.

B. The Effect of Membership in the Settlement Class. If you come within the definition of the Settlement Class, you are eligible for compensation and are subject to the terms of the Settlement, unless you file the enclosed Request for Exclusion to opt out of the Settlement Class. Members of the Settlement Class are eligible to receive the benefits created by the proposed Settlement and will be bound by the Settlement if it is approved by the Court. Persons who exclude themselves from the Class will not be bound by the Settlement and will not share in the Settlement proceeds, but may pursue their own timely individual claims against Defendants.

IV. What are the terms of the Settlement?

The proposed Settlement was negotiated between Defendants and the attorneys for the Settlement Class (“Class Counsel”). The attorneys for all of the Parties believe this Settlement is in the best interest of the members of the Settlement Class.

Monetary Compensation

- Defendants shall provide the members of the Settlement Class monetary compensation in the maximum total amount of \$775,000.00 (the “Gross Settlement Amount”). The Gross

Exhibit A-4

Settlement Amount will deduct amounts awarded by the Court for attorneys' fees and costs, administrative expenses, payment to the California LWDA, and enhancement payments to the Plaintiff who filed the Lawsuit. The remainder of the Gross Settlement Amount is referred to as the "Net Settlement Amount." The Net Settlement Amount will be paid as Individual Settlement Payments to Settlement Class Members who do not opt out of the Settlement.

- Each Settlement Class Member's proportional share of the Class portion of Net Settlement Amount will be determined by dividing the number of weeks worked by the Settlement Class Member for Defendants at any time during the period of December 9, 2017 through [insert earlier of August 21, 2023 or date of Preliminary Approval] (the "Class Period") by all weeks worked by all Settlement Class Members during the Class Period, multiplied by the Net Settlement Amount.
- Each Settlement Class Member, even if they opt out, will receive their share of the PAGA portion of the settlement, explained below, which shall be distributed to aggrieved employees based on number of workweeks worked during the PAGA period, defined as one year and sixty-five days preceding the filing of the original Complaint. The PAGA period is the time period of October 5, 2023 through [insert earlier of August 21, 2023 or date of Preliminary Approval].
- Defendants, through the Settlement Administrator, shall pay the amounts awarded by the Court for attorneys' fees and costs, administrative expenses, enhancements, payments to the LWDA, and the amounts claimed by the Settlement Class Members, within 30 days after the Effective Date of the Settlement Agreement. The Effective Date is defined as follows: the 15th day after the date by which the last of the following has occurred: (a) all conditions of Settlement have been satisfied; (b) the Court has entered and filed the Final Approval Order and Judgment; and (c) the time period for appeal of the Judgment has been exhausted without any appeals having been filed, and/or all such appeals have been voluntarily or involuntarily dismissed, and/or the appropriate appellate court or courts have entered a final judgment affirming the Final Approval Order and Judgment of the Court and the final judgment of such appellate court or courts is no longer subject to any further appellate challenge or procedure.

Fees and Expenses

When seeking Final Approval of the proposed Settlement, Class Counsel will apply to the Court for an award of attorneys' fees in an amount up to \$255,750.00, (which is 33% of total Gross Settlement Amount of \$775,000.00) and an award of reasonable, documented costs not to exceed \$25,000. Such payments, if approved by the Court, will be deducted from the Gross Settlement Amount before calculation of the Net Settlement Amount available for distribution to the Settlement Class Members.

Settlement Administration Costs

When seeking Final Approval of the proposed Settlement, Class Counsel will apply to the Court for an award of Settlement administration costs of up to \$10,500 for a third-party class-action administrator, Phoenix Class Action Administration Solutions, for the administrative services in connection with this Settlement. Such payments, if approved by the Court, will be deducted from the Gross Settlement Amount before calculation of the Net Settlement Amount available for distribution to the Settlement Class Members.

Class Representative Service Awards

When seeking Final Approval of the proposed Settlement, Class Counsel will apply to the Court for a service award of up to \$5,000.00 for Plaintiff David Vargas. Such payment, if approved by the Court, will be deducted from the Gross Settlement Amount before calculation of the Net Settlement Amount available for distribution to the Class Members.

The Portion of the PAGA Payment to the LWDA

When seeking Final Approval of the proposed Settlement, Class Counsel will seek approval for a payment of \$60,000.00 in PAGA penalties, \$45,000.00 of which shall go to the LWDA, and \$15,000.00 of which will be distributed to Class Members. Such payment, if approved by the Court, will be deducted from the Gross Settlement Amount before calculation of the Net Settlement Amount available for distribution to the Class Members.

Release of Claims

- Upon the Court's approval of the Settlement, judgment will be entered fully and finally settling the Lawsuit as to all Settlement Class Members.
- As a result of the Settlement and judgment to be entered, Plaintiff and the Settlement Class Members who did not opt out of the Settlement by filing a timely, valid Request for Exclusion, will have released and discharged Defendants and any of their affiliates, parents, subsidiaries, divisions, predecessors, successors, and assigns, and each of their officers, directors, board members, trustees, shareholders, employees, agents, attorneys, auditors, accountants, experts, contractors, stockholders, representatives, partners, insurers, reinsurers, and other persons acting on their behalf, and each of them (collectively, the "Released Parties") from any and all any and all claims, rights, demands, charges, complaints, causes of action, obligations, or liability of any and every kind between December 9, 2017 to the earlier of either (i) April 10, 2023 or (ii) the date of preliminary approval of the Settlement, for any and all claims that were raised or could have been raised based on the factual allegations made in the Complaint through final approval of the Settlement. This includes but is not limited to: (1) failure to pay minimum wages; (2) failure to pay overtime wages at the regular rate of pay; (3) failure to provide required meal periods; (4) failure to provide required rest periods; (5) failure to indemnify employees for necessary expenditures incurred in discharge of duties; (6) failure to maintain required records; (7) failure to furnish accurate itemized wages statements; (8) failure to timely pay wages during employment; (9) failure to pay all wages due to discharged and quitting employees; (10) PAGA claims for civil penalties due to any Labor Code violations by Defendants arising out of or related to events alleged in the Complaint including, but not limited to, Labor Code sections 200, 201, 202, 203, 204, 210, 221, 225.5, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698-2699.5, and 2802; (11) claims brought under Business & Professions Code section 17200 *et seq.* including, but not limited to, all claims for unfair, unlawful and harmful conduct to class members, the general public and Defendants' competitors and claims of unlawfully gaining an unfair advantage over other businesses; (12) any and all claims arising out of alleged violations of the California Labor Code, including sections 200, 201, 202, 203, 204, 210, 221, 225.5, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698-2699.5, and 2802, and California Industrial Welfare Commission Wage Order No. 4-2001; (13) penalties of any nature, interest, or attorneys' fees and costs arising out of any claims that were raised or could have been raised based on the factual allegations made in the Complaint through final approval of the Settlement; and (14) any other claims that were raised or could have been raised based on the factual allegations made in the Complaint through final approval of the Settlement.

- All Aggrieved Employees, whether or not they opt out of the Settlement Class, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, during the PAGA Period, based on the facts alleged in the Complaint and the PAGA Notice. The PAGA Period is the time period from October 5, 2020 through [the earlier of August 21, 2023 or the date of preliminary approval].

If you do NOT exclude yourself from the Settlement Class by following the procedures set forth in the Request for Exclusion and the Court approves the proposed Settlement, you will be deemed to have entered into the Release in the Settlement Agreement.

V. How do I receive a payment?

Any Class Member who wishes to be considered for any payment under this Settlement must not submit a Request for Exclusion. If a Class Member does not submit a Request for Exclusion he or she will receive a share of the Individual Settlement Payment.

The Individual Settlement Payment is based on the number of weeks you worked during the period covered by the Settlement. Defendants' records show that you have [Insert Number of Weeks Worked]. If you dispute the number of weeks worked on the Notice, you may produce, by no later than ten (10) days from the date the Notice is postmarked, evidence to the Settlement Administrator showing that such information is inaccurate. All disputes will be decided within seven (7) business days from the date the dispute is received by the Settlement Administrator. The Settlement Administrator may be contacted at [redacted], [Insert Settlement Administrator address and telephone number].

VI. Who represents the Class?

The attorneys that serve as Class Counsel are Matthew J. Matern, Joshua D. Boxer, and Sara B. Tosdal of Matern Law Group, PC.

If you have questions about the Settlement, or the procedures outlined in this Notice, you should contact Class Counsel. For purposes of this Notice, Class Counsel to be contacted shall be Sara B. Tosdal, 1330 Broadway, Suite 436, Oakland, California 94612 (stosdal@maternlawgroup.com).

Do not contact the Court.

VII. What are the reasons for the Settlement?

The Parties agreed to enter into this proposed Settlement after weighing the risks and benefits of this Settlement compared with those of continuing the Lawsuit. The factors considered included the uncertainty and delay associated with continued legal proceedings, a trial and appeals, and the uncertainty of several important legal issues that have yet to be determined. The Parties balanced

these and other substantial risks in determining that the proposed Settlement is fair, reasonable, and adequate in light of all circumstances and in the best interests of Settlement Class Members.

If the Lawsuit continued, the Court might rule in favor of Defendants and the Settlement Class Members might not receive any recovery or monetary compensation. Defendants agreed to this proposed Settlement in order to avoid the expense and distraction associated with continued legal proceedings and the chance that the Court might rule in favor of the Settlement Class Members.

IX. When is the Court hearing and what is it for?

On [INSERT COURT HEARING DATE], the Hon. Evelio Grillo will hold a public hearing in Department 21 of Alameda County Superior Court, 1221 Oak Street, Oakland, California 94612, for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel's applications for attorneys' fees and costs, and whether to approve the Plaintiff's request for an enhancement. Settlement Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval.

X. Where can I get more information?

If you have questions about this Notice, the enclosed Request for Exclusion, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Settlement Class, you should contact [INSERT SETTLEMENT ADMINISTRATOR INFORMATION], for more information or to request that a copy of this Notice be sent to you in the mail. You may also request a copy of the full Settlement Agreement.

If you wish to communicate directly with Class Counsel, you may contact Sara B. Tosdal, 1330 Broadway, Suite 436, Oakland, California 94612 (stosdal@maternlawgroup.com). You may also seek advice and guidance from your own private attorney at your own expense, if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is on file with the Court and available to be inspected at any time during regular business hours at the Clerk's Office, 1221 Oak Street, Oakland, California 94612. You may also review the pleadings, records and other papers on file in this lawsuit at the Clerk's Office.

PLEASE DO NOT WRITE OR TELEPHONE THE COURT OR DEFENDANTS FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.

QUESTIONS? CALL [INSERT TOLL-FREE NUMBER]

EXHIBIT B

REQUEST FOR EXCLUSION FROM SETTLEMENT
AND EXCLUSION FROM INDIVIDUAL SETTLEMENT PAYMENT

David Vargas v. Sitecare Landscape Maintenance, Inc. & Siteworks Landscape, Inc.

Alameda County Superior Court

Case No. 21CV003815

YOU MAY TIMELY SUBMIT THIS REQUEST FOR EXCLUSION *ONLY* IF YOU *DO NOT WISH TO BE INCLUDED IN THE SETTLEMENT* AND IF YOU *DO NOT WISH TO RECEIVE AN INDIVIDUAL SETTLEMENT PAYMENT*.

INSTRUCTIONS:

You must timely complete, sign, and mail this Request for Exclusion if you want to “opt-out” of the Settlement and do not want to receive an Individual Settlement Payment. If you choose to continue to pursue the lawsuit, you will have to find new counsel at your own expense.

IDENTIFYING INFORMATION

Please verify and/or complete any missing identifying information:

NAME AND FORMER NAMES (IF ANY):

ADDRESS LINE 1

ADDRESS LINE 2

LAST FOUR DIGITS OF

SOCIAL SECURITY NUMBER

TELEPHONE NUMBER

If you want to be excluded from the Settlement and not receive an Individual Settlement Payment, you must timely file this Request for Exclusion with **[INSERT SETTLEMENT ADMINISTRATOR INFORMATION]** no later than **[INSERT DATE]**.

I declare the foregoing to be true and correct under penalty of perjury under the laws of the United States and the State of California.

Date: _____, 2023

Signed: _____

[NAME]