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 CLS LANDSCAPE MANAGEMENT, INC.

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 FOR THE COUNTY OF SAN BERNARDINO

20 ALBERTO VIRAMONTES, individually, and  
 21 on behalf of other members of the general public  
 similarly situated, and as an aggrieved employee  
 22 pursuant to the Private Attorneys General Act  
 ("PAGA"),

23 Plaintiff,

24 vs.

25 CLS LANDSCAPE MANAGEMENT, INC., a  
 26 California corporation; and DOES 1 through 10,  
 inclusive,

27 Defendant.

Case No.: CIVSB2134798

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

## JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT AND RELEASE

This Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement” or “Settlement Agreement”) is made and entered into by and between Plaintiff Alberto Viramontes (“Plaintiff” or “Class Representative”), as an individual and on behalf of all others similarly situated, and Defendant CLS Landscape Management, Inc. (“Defendant”) (collectively with Plaintiff, the “Parties”).

### DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. “Action” means *Viramontes v. CLS Landscape Management, Inc.*, No. CIVSB2134798 (San Bernardino County Superior Court).

2. “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the Parties and approved by the Court for Class Counsel’s litigation and resolution of the Action, and all out-of-pocket costs incurred and to be incurred by Class Counsel in the Action, including but not limited to expert/consultant fees, investigation costs, and costs associated with documenting the Settlement, providing any notices required as part of the Settlement or Court order, securing the Court’s approval of the Settlement, administering the Settlement, and obtaining entry of a Judgment terminating the Action. Class Counsel will request attorneys’ fees not in excess of one-third (1/3) of the Gross Settlement Amount, or Two Hundred Seventy Eight Thousand Three Hundred Thirty Three Dollars (\$278,333). The Attorneys’ Fees and Costs will also mean and include the additional reimbursement of any costs and expenses associated with Class Counsel’s litigation and settlement of the Action, up to Ten Thousand Dollars (\$10,000), subject to the Court’s approval. Defendant has agreed not to oppose Class Counsel’s request for fees and reimbursement of costs as set forth above.

3. “Class Counsel” means Capstone Law APC.

4. “Class List” means a complete list of all Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator and Class Counsel within twenty (20) calendar days after Preliminary Approval of this Settlement. The Class List will be formatted in Microsoft Office Excel and will include each Class Member’s full name; most recent mailing address and telephone number; Social Security number; dates of employment; the

1 respective number of Workweeks that each Class Member worked during the Class Period and PAGA  
2 Period; and any other relevant information necessary to calculate settlement payments.

3 5. "Class Member(s)" or "Settlement Class" means all persons who were employed by  
4 Defendant as non-exempt, hourly paid employees in the State of California at any time during the period  
5 from December 21, 2017 through August 10, 2023.

6 6. "Class Notice" means the Notice of Class Action Settlement, substantially in the form  
7 attached as Exhibit A.

8 7. "Class Period" means the period from December 21, 2017 through August 10, 2023.

9 8. "Class Representative Enhancement Payment" means the amount to be paid to Plaintiff  
10 in recognition of their effort and work in prosecuting the Action on behalf of Class Members, and for  
11 their general release of claims. Subject to the Court granting final approval of this Settlement Agreement  
12 and subject to the exhaustion of any and all appeals, Plaintiff will request Court approval of a Class  
13 Representative Enhancement Payment of up to Ten Thousand Dollars (\$10,000).

14 9. "Court" means the San Bernardino County Superior Court.

15 10. "Defendant" means Defendant CLS Landscape Management, Inc.

16 11. "Effective Date" means the later of: (a) if no timely objections are filed, or are  
17 withdrawn prior to Final Approval, then the date of Final Approval; or (b) if a Class Member files an  
18 objection to the Settlement, the Effective Date shall be the seventy (70) calendar days after the date of  
19 Final Approval, provided no appeal is initiated by an objector; or (c) if a timely appeal is initiated by an  
20 objector, then the Effective Date will be no longer than ten (10) days from the date of final resolution of  
21 that appeal (including any requests for rehearing and/or petitions for certiorari), resulting in final judicial  
22 approval of the Settlement.

23 12. "Final Approval" means the date on which the Court enters an order granting final  
24 approval of the Settlement Agreement.

25 13. "Gross Settlement Amount" means the Gross Settlement Amount of Eight Hundred  
26 Thirty Five Thousand Dollars (\$835,000), to be paid by Defendant in full satisfaction of all Released  
27 Class Claims and Released PAGA Claims, which includes all Individual Settlement Payments,  
28 Attorneys' Fees and Costs, the Class Representative Enhancement Payment, the PAGA Settlement

1 Amount, and Settlement Administration Costs. This Gross Settlement Amount has been agreed to by  
2 Plaintiff and Defendant based on the aggregation of the agreed-upon settlement value of individual  
3 claims. In no event will Defendant be liable for more than the Gross Settlement Amount except as  
4 otherwise explicitly set forth herein. There will be no reversion of the Gross Settlement Amount to  
5 Defendant. Defendant will be separately responsible for any employer payroll taxes required by law,  
6 including the employer paid portion of FICA, FUTA, and SDI contributions, which shall not be paid  
7 from the Gross Settlement Amount.

8 14. "Individual Settlement Payment" means each Participating Class Member's and PAGA  
9 Member's respective shares of the Net Settlement Fund and PAGA Fund.

10 15. "Net Settlement Fund" means the portion of the Gross Settlement Amount remaining  
11 after deducting the Attorneys' Fees and Costs, the Class Representative Enhancement Payment, the  
12 PAGA Settlement Amount, and Settlement Administration Costs. The Net Settlement Fund will be  
13 distributed to Participating Class Members. There will be no reversion of the Net Settlement Fund to  
14 Defendant.

15 16. "Notice of Objection" means a Class Member's valid and timely written objection to the  
16 Settlement Agreement. For the Notice of Objection to be valid, it must include: (a) the objector's full  
17 name, signature, address, and telephone number, (b) a written statement of all grounds for the objection  
18 accompanied by any legal support for such objection; (c) copies of any papers, briefs, or other  
19 documents upon which the objection is based; and (d) a statement whether the objector intends to appear  
20 at the final fairness hearing.

21 17. "PAGA Members" means all persons who were employed by Defendant as non-  
22 exempt, hourly paid employees in the State of California at any time during the period from November  
23 12, 2020 through August 10, 2023.

24 18. "PAGA Period" means the period from November 12, 2020 through August 10, 2023.

25 19. "PAGA Settlement Amount" means the amount that the Parties have agreed to pay to  
26 the Labor and Workforce Development Agency ("LWDA") and PAGA Members in connection with  
27 Plaintiff's claim under the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698,  
28 *et seq.*, "PAGA") ("PAGA Settlement"). The Parties have agreed that Twenty Five Thousand Dollars

1 (\$25,000) of the Gross Settlement Amount will be allocated to the PAGA Settlement. Pursuant to  
2 PAGA, Seventy-Five Percent (75%), or Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750), of  
3 the PAGA Settlement Amount will be paid to the California Labor and Workforce Development  
4 Agency ("Labor and Workforce Development Agency Payment"), and Twenty-Five Percent (25%), or  
5 Six Thousand Two Hundred Fifty Dollars (\$6,250) ("PAGA Fund"), of the PAGA Settlement will be  
6 disbursed to PAGA Members, and regardless whether they request to be excluded from the Settlement  
7 Class.

8 20. "Parties" means Plaintiff and Defendant collectively.

9 21. "Participating Class Members" means all Class Members who do not submit timely and  
10 valid Requests for Exclusion.

11 22. "Plaintiff" means Plaintiff Alberto Viramontes.

12 23. "Preliminary Approval" means the date on which the Court enters an order granting  
13 preliminary approval of the Settlement Agreement.

14 24. "Released Class Claims" means all claims, rights, demands, liabilities, and causes of  
15 action that were alleged, or reasonably could have been alleged, based on the same set of operative facts  
16 as those set forth in the operative complaint during the Class Period, including: (1) Cal. Lab. Code §§  
17 510 and 1198 (unpaid overtime); (2) Cal. Lab. Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (unpaid  
18 minimum wages); (3) Cal. Lab. Code §§ 226.7, 512(a), 516, and 1198 (failure to provide meal periods);  
19 (4) Cal. Lab. Code §§ 226.7, 516, and 1198 (failure to authorize and permit rest periods); (5) Cal. Lab.  
20 Code §§ 226.7, 516, 1198 and California Code of Regulations Title 8, Section 3395 (failure to provide  
21 heat recovery periods); (6) Cal. Lab. Code §§ 226(a), 1174(d), and 1198 (non-compliant wage  
22 statements and failure to maintain accurate payroll records); (7) Cal. Lab. Code §§ 226(b)-(c), 432, 1198,  
23 and 1198.5 (failure to produce employment records); (8) Cal. Lab. Code §§ 201 and 202 (failure to  
24 timely pay final wages not timely paid upon termination); (9) Section 204 (failure to timely pay wages  
25 during employment); (10) Cal. Lab. Code § 1198 and California Code of Regulations Title 8, Section  
26 11050 Subdivision 5(A) (failure to provide reporting time pay); (11) Cal. Lab. Code § 2802  
27 (unreimbursed business expenses); (12) Cal. Lab. Code §§ 2698, *et seq.* (PAGA); (13) California  
28 Business & Professions Code §§ 17200, *et seq.* (unlawful business practices); and (14) California

1 Business & Professions Code §§ 17200, *et seq.* (unfair business practices).

2 25. “Released PAGA Claims” means all claims for civil penalties under California Labor  
3 Code §§ 2698, *et seq.*, that were brought or could reasonably have been brought based on the facts  
4 alleged in Plaintiff’s initial (dated November 12, 2021) and amended (dated January 18, 2022) letters to  
5 the California LWDA during the PAGA Period.

6 26. “Released Parties” means Defendant, its past or present officers, directors, shareholders,  
7 agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and  
8 its respective successors and predecessors in interest, assigns, subsidiaries, affiliates, parents and  
9 attorneys, if any.

10 27. “Request for Exclusion” means a timely letter submitted by a Class Member indicating a  
11 request to be excluded from the Settlement Class. The Request for Exclusion must: (a) set forth the  
12 name, address, telephone number and last four digits of the Social Security Number of the Class  
13 Member requesting exclusion; (b) be signed by the Class Member; (c) be returned to the Settlement  
14 Administrator; (d) clearly state that the Class Member does not wish to be included in the Settlement;  
15 and (e) be faxed or postmarked on or before the Response Deadline.

16 28. “Response Deadline” means the deadline by which Class Members must postmark or  
17 fax to the Settlement Administrator Requests for Exclusion, postmark or fax disputes concerning the  
18 calculation of Individual Settlement Payments, or postmark Notices of Objection to the Settlement  
19 Administrator. The Response Deadline will be forty-five (45) calendar days from the initial mailing of  
20 the Class Notice by the Settlement Administrator, unless the forty-fifth (45th) calendar day falls on a  
21 Sunday or State holiday, in which case the Response Deadline will be extended to the next day on which  
22 the U.S. Postal Service is open.

23 29. “Settlement Administration Costs” means the costs payable from the Gross Settlement  
24 Amount to the Settlement Administrator for administering this Settlement, including, but not limited to,  
25 printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Gross  
26 Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The  
27 Settlement Administration Costs will be paid from the Gross Settlement Amount, including, if necessary,  
28 any such costs in excess of the amount represented by the Settlement Administrator as being the

1 maximum costs necessary to administer the Settlement. Based on an estimated Settlement Class of  
2 approximately 700 Class Members, the Settlement Administration Costs are currently estimated not to  
3 exceed Fifteen Thousand Dollars (\$15,000).

4 30. "Settlement Administrator" means CPT Group, Inc., or any other third-party class action  
5 settlement administrator agreed to by the Parties and approved by the Court for the purposes of  
6 administering this Settlement. The Parties each represent that they do not have any financial interest in  
7 the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that  
8 could create a conflict of interest.

9 31. "Workweeks" means any week during which a Class Member worked for Defendant at  
10 least one day, during the Class Period. All Class Members will be credited with at least one Workweek  
11 during the Class Period, and all PAGA Members will be credited with at least one Workweek during the  
12 PAGA Period.

### 13 TERMS OF AGREEMENT

14 The Plaintiff, on behalf of himself and the Settlement Class, and Defendant agree as follows:

15 32. Funding of the Gross Settlement Amount. Within thirty (30) calendar days after the  
16 Effective Date, Defendant will deposit half of the Gross Settlement Amount into a Qualified Settlement  
17 Fund ("QSF") to be established by the Settlement Administrator. Defendant will deposit the remaining  
18 half of the Gross Settlement Amount, and the employer payroll taxes on the wages portion of Individual  
19 Settlement Payments, within one-hundred and eighty (180) days after the Effective Date or by May 9,  
20 2024, whichever is later ("Funding Date").

21 33. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any application or  
22 motion by Class Counsel for Attorneys' Fees and Costs of not more than Two Hundred Seventy Eight  
23 Thousand Three Hundred Thirty Three Dollars (\$278,333), plus the reimbursement of all out-of-pocket  
24 costs and expenses associated with Class Counsel's litigation and settlement of the Action (including  
25 expert/consultant fees, investigations costs, etc.), not to exceed Ten Thousand Dollars (\$10,000), both of  
26 which will be paid from the Gross Settlement Amount. Released Parties shall have no liability to Class  
27 Counsel or any other Plaintiff's Counsel arising from any claim to any portion of any Attorneys' Fees  
28 and/or Costs. Class Counsel assumes full responsibility and liability for taxes owed on the Attorneys'

1 Fees and/or Costs and holds Defendant harmless, and indemnifies Defendant from any dispute or  
2 controversy regarding any division or sharing of any of these payments.

3 34. Class Representative Enhancement Payment. In exchange for a general release, and in  
4 recognition of their effort and work in prosecuting the Action on behalf of Class Members, Defendant  
5 agrees not to oppose or impede any application or motion for a Class Representative Enhancement  
6 Payment of up to Ten Thousand Dollars (\$10,000), to Plaintiff. The Class Representative Enhancement  
7 Payment will be paid from the Gross Settlement Amount and will be in addition to Plaintiff's Individual  
8 Settlement Payment paid pursuant to the Settlement. Plaintiff will be solely and legally responsible to  
9 pay any and all applicable taxes on the Class Representative Enhancement Payment. Plaintiff  
10 understands and agrees that this Settlement Agreement shall remain in full force and effect even if the  
11 full amount of Class Representative Enhancement Payment sought by Plaintiff is not ultimately awarded  
12 by the Court.

13 35. Settlement Administration Costs. The Settlement Administrator will be paid for the  
14 reasonable costs of administration of the Settlement and distribution of payments from the Gross  
15 Settlement Amount, which is currently estimated not to exceed Fifteen Thousand Dollars (\$15,000).  
16 These costs, which will be paid from the Gross Settlement Amount, will include, *inter alia*, the required  
17 tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms,  
18 distributing Class Notices, calculating and distributing the Gross Settlement Amount, and providing  
19 necessary reports and declarations.

20 36. PAGA Settlement Amount. Subject to Court approval, the Parties agree that the amount  
21 of Twenty Five Thousand Dollars (\$25,000) from the Gross Settlement Amount will be designated for  
22 satisfaction of Plaintiff's PAGA claim. Pursuant to PAGA, Seventy-Five Percent (75%), or Eighteen  
23 Thousand Seven Hundred Fifty Dollars (\$18,750), of this sum will be paid to the LWDA and Twenty-  
24 Five Percent (25%), or Six Thousand Two Hundred Fifty Dollars (\$6,250), will be paid to PAGA  
25 Members in proportion to the number of Workweeks worked during the PAGA Period.

26 37. No Right to Exclusion or Objections to the PAGA Settlement. Because this settlement  
27 resolves claims and actions brought pursuant to PAGA by Plaintiff acting as a proxy and as a Private  
28 Attorney General of, and for, the State of California and the LWDA, the Parties agree that no PAGA

1 Member has the right to exclude himself or herself from the release of the Released PAGA Claims, and  
2 all PAGA Members will receive their shares of the PAGA Fund. The Parties also agree that no PAGA  
3 Member has the right to object to the PAGA Settlement Amount.

4 38. Net Settlement Fund. The entire Net Settlement Fund will be distributed to Participating  
5 Class Members. No portion of the Net Settlement Fund will revert to or be retained by Defendant.

6 39. PAGA Fund. The entire PAGA Fund will be distributed to all PAGA Members. No  
7 portion of the PAGA Fund will revert to or be retained by Defendant.

8 40. Individual Settlement Payment Calculations. Individual Settlement Payments will be  
9 calculated and apportioned from the Net Settlement Fund and PAGA Fund based on the number of  
10 Workweeks a Class Member worked during the Class Period and PAGA Period. Specific calculations of  
11 Individual Settlement Payments will be made as follows:

12 40(a) Payments from the Net Settlement Fund. Defendant will calculate the total  
13 number of Workweeks worked by each Class Member during the Class  
14 Period and the aggregate total number of Workweeks worked by all Class  
15 Members during the Class Period. To determine each Class Member's  
16 estimated "Individual Settlement Payment" from the Net Settlement Fund,  
17 the Settlement Administrator will use the following formula: The Net  
18 Settlement Fund will be divided by the aggregate total number of  
19 Workweeks, resulting in the "Workweek Value." Each Class Member's  
20 "Individual Settlement Payment" will be calculated by multiplying each  
21 individual Class Member's total number of Workweeks by the Workweek  
22 Value. The Individual Settlement Payment will be reduced by any required  
23 deductions for each Participating Class Member as specifically set forth  
24 herein, including employee-side tax withholdings or deductions. The entire  
25 Net Settlement Fund will be disbursed to all Class Members who do not  
26 submit timely and valid Requests for Exclusion. If there are any valid and  
27 timely Requests for Exclusion, the Settlement Administrator shall  
28 proportionately increase the Individual Settlement Payment for each

1 Participating Class Member according to the number of Workweeks  
2 worked, so that the amount actually distributed to the Settlement Class  
3 equals 100% of the Net Settlement Fund.

4 40(b) Payments from the PAGA Fund. Defendant will calculate the total number  
5 of Workweeks worked by each PAGA Member during the PAGA Period  
6 and the aggregate total number of Workweeks worked by all PAGA  
7 Members during the PAGA Period. To determine each PAGA Member's  
8 estimated "Individual Settlement Payment," the Settlement Administrator  
9 will use the following formula: The PAGA Fund will be divided by the  
10 aggregate total number of Workweeks, resulting in the "PAGA Workweek  
11 Value." Each PAGA Member's "Individual Settlement Payment" will be  
12 calculated by multiplying each individual PAGA Member's total number of  
13 Workweeks by the PAGA Workweek Value. The entire PAGA Fund will  
14 be disbursed to all PAGA Members.

15 41. Class Workweeks. Based on a review of its records to date, Defendant estimates there  
16 are 645 Class Members who collectively worked a total of 69,663 Workweeks during the Class Period.

17 42. No Credit Toward Benefit Plans. The Individual Settlement Payments made to  
18 Participating Class Members under this Settlement, as well as any other payments made pursuant to this  
19 Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any  
20 Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k)  
21 plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan.  
22 Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions,  
23 or amounts to which any Class Members may be entitled under any benefit plans.

24 43. Administration Process. The Parties agree to cooperate in the administration of the  
25 settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in  
26 administration of the Settlement.

27 44. Delivery of the Class List. Within twenty (20) calendar days of Preliminary Approval,  
28 Defendant will provide the Class List to the Settlement Administrator and to Class Counsel.

1           45.     Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the Class  
2 List from Defendant, the Settlement Administrator will mail a Class Notice to all Class Members via  
3 regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class  
4 List.

5           46.     Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement  
6 Administrator will perform a search based on the National Change of Address Database for information  
7 to update and correct for any known or identifiable address changes. Any Class Notices returned to the  
8 Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly  
9 via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement  
10 Administrator will indicate the date of such re-mailing on the Class Notice. If no forwarding address is  
11 provided, the Settlement Administrator will promptly attempt to determine the correct address using a  
12 skip-trace, or other search using the name, address and/or Social Security number of the Class Member  
13 involved, and will then perform a single re-mailing. Those Class Members who receive a re-mailed  
14 Class Notice, whether by skip-trace or by request, will have either (a) an additional fifteen (15) calendar  
15 days or (b) until the Response Deadline, whichever is later, to submit a Request for Exclusion or an  
16 objection to the Settlement. To protect Class Members' privacy rights, the Settlement Administrator  
17 must maintain the Class List in confidence, use the Class List only for purposes of this Settlement and for  
18 no other purpose, and restrict access to the Class List to Settlement Administrator employees who need  
19 access to the Class List to effect and perform under this Agreement.

20           47.     Class Notices. All Class Members will be mailed a Class Notice. Each Class Notice will  
21 provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement's principal  
22 terms; (c) the Settlement Class and PAGA Member definitions; (d) the total number of Workweeks each  
23 respective Class Member and PAGA Member worked for Defendant during the Class Period and PAGA  
24 Period; (e) each Class Member's and PAGA Member's estimated Individual Settlement Payment and the  
25 formula for calculating Individual Settlement Payments; (f) the dates which comprise the Class Period  
26 and PAGA Period; (g) instructions on how to submit Requests for Exclusion or Notices of Objection; (h)  
27 the deadlines by which the Class Member must postmark or fax Request for Exclusions, or postmark  
28 Notices of Objection to the Settlement; and (i) the claims to be released.

48. Disputed Information on Class Notices. Class Members will have an opportunity to dispute the information provided in their Class Notices. To the extent Class Members dispute their employment dates or the number of Workweeks on record, Class Members may produce evidence to the Settlement Administrator showing that such information is inaccurate. Defendant's records will be presumed correct, but the Settlement Administrator shall contact the Parties regarding the dispute and the Parties will work in good faith to resolve it. All disputes must be submitted by the Response Deadline, and will be decided within ten (10) business days after the Response Deadline.

49. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3) business days of receiving the defective submission to advise the Class Member that his or her submission is defective and that the defect must be cured to render the Request for Exclusion valid. The Class Member will have until (a) the Response Deadline or (b) fifteen (15) calendar days from the date of the cure letter, whichever date is later, to postmark or fax a revised Request for Exclusion. If the revised Request for Exclusion is not postmarked or received by fax within that period, it will be deemed untimely.

50. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the Settlement Agreement must sign and fax or postmark a written Request for Exclusion to the Settlement Administrator within the Response Deadline. In the case of Requests for Exclusion that are mailed to the Settlement Administrator, the postmark date will be the exclusive means to determine whether a Request for Exclusion has been timely submitted.

51. Escalator. If the total number of Workweeks worked by all Class Members during the Class Period is greater than Seventy-Six Thousand Six Hundred and Thirty (76,630), then the Gross Settlement Amount will be increased according to the following formula: Increased Gross Settlement Amount = Total Number of Workweeks During the Class Period (realized number greater than 76,630)  $\div$  76,630  $\times$  \$835,000.

52. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the Released Class

Claims, as well as any Judgment that may be entered by the Court if it grants final approval to the Settlement.

53. Releases by Participating Class Members. Upon the Funding Date, and except as to such rights or claims as may be created by this Settlement Agreement, each Participating Class Member, together and individually, on their behalf and on behalf of their respective heirs, executors, administrators, agents, and attorneys, shall fully and forever release and discharge all of the Released Parties, or any of them, from each of the Released Class Claims arising during the Class Period. Thus, even if a Participating Class Member (including Plaintiff), discovers facts in addition to or different from those that they now know or believe to be true with respect to the Released Class Claims, those claims will remain released and forever barred. Therefore, with respect only to the Released Class Claims, Plaintiff and Participating Class Members expressly waive and relinquish the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

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.

54. Releases by PAGA Members. Upon the Funding Date, and except as to such rights or claims as may be created by this Settlement Agreement, each PAGA Member, together and individually, on their behalf and on behalf of their respective heirs, executors, administrators, agents, and attorneys, shall fully and forever release and discharge all of the Released Parties, or any of them, from each of the Released PAGA Claims during the PAGA Period. Thus, even if a PAGA Member (including Plaintiff), discovers facts in addition to or different from those that they now know or believe to be true with respect to the Released PAGA Claims, those claims will remain released and forever barred. Therefore, with respect only to the Released PAGA Claims, Plaintiff and PAGA Members expressly waive and relinquish the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

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.

1           55.     Defendant's Right to Rescind. Defendant will have, in its sole discretion, the right to  
2 void and withdraw from the Settlement if, at any time prior to Final Approval, Five Percent (5%) or  
3 more of Class Members opt out of the settlement. Defendant must exercise this right of rescission in  
4 writing to Class Counsel within fourteen (14) calendar days after the Response Deadline. If the option to  
5 rescind is exercised, then the Parties will each be responsible for one-half of all Settlement  
6 Administration Costs incurred to the date of rescission.

7           56.     Objection Procedures. To object to the Settlement Agreement, a Class Member may  
8 either postmark a valid Notice of Objection to the Settlement Administrator on or before the Response  
9 Deadline, or appear in person at the Final Approval Hearing. Class Members who fail to object either by  
10 submitting a valid Notice of Objection or appearing in person at the Final Approval Hearing will be  
11 deemed to have waived all objections to the Settlement and will be foreclosed from making any  
12 objections, whether by appeal or otherwise, to the Settlement Agreement. At no time will any of the  
13 Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written  
14 objections to the Settlement Agreement or appeal from the final approval order and judgment. Class  
15 Counsel will not represent any Class Members with respect to any such objections to this Settlement. If a  
16 Class Member timely submits both a Notice of Objection and a Request for Exclusion, the Request for  
17 Exclusion will be given effect and considered valid, the Notice of Objection shall be rejected, and the  
18 Class Member shall not participate in or be bound by the Settlement.

19           57.     Certification Reports Regarding Individual Settlement Payment Calculations. The  
20 Settlement Administrator will provide Defendant's counsel and Class Counsel a weekly report that  
21 certifies the number of Class Members who have submitted valid Requests for Exclusion or objections to  
22 the Settlement, and whether any Class Member has submitted a challenge to any information contained  
23 in their Class Notice. Additionally, the Settlement Administrator will provide to counsel for both Parties  
24 any updated reports regarding the administration of the Settlement Agreement as needed or requested.

25           58.     Distribution Timing of Individual Settlement Payments. Within ten (10) calendar days  
26 of the Funding Date, the Settlement Administrator will issue payments via First Class U.S. Mail, postage  
27 prepaid to: (a) Participating Class Members and PAGA Members; (b) the Labor and Workforce  
28

1 Development Agency; (c) Plaintiff; and (d) Class Counsel. The Settlement Administrator will also issue  
2 a payment to itself for Court-approved services performed in connection with the Settlement.

3 59. Un-cashed Settlement Checks. Funds represented by Individual Settlement Payment  
4 checks returned as undeliverable and Individual Settlement Payment checks remaining un-cashed for  
5 more than one hundred and eighty (180) calendar days after issuance will be tendered to The California  
6 State Bar Justice Gap Fund.

7 60. Certification of Completion. Upon completion of administration of the Settlement, the  
8 Settlement Administrator will provide a written declaration under oath to certify such completion to the  
9 Court and counsel for all Parties.

10 61. Treatment of Individual Settlement Payments. All Individual Settlement Payments will  
11 be allocated as follows: (a) Twenty Percent (20%) of each Individual Settlement Payment will be  
12 allocated as wages for which IRS Forms W-2 will be issued; and (b) Eighty Percent (80%) will be  
13 allocated as non-wages for which IRS Forms 1099-MISC will be issued.

14 62. Administration of Taxes by the Settlement Administrator. The Settlement Administrator  
15 will be responsible for issuing to Plaintiff, Participating Class Members, PAGA Members, and Class  
16 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to  
17 this Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes  
18 and penalties to the appropriate government authorities.

19 63. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect  
20 of the payments called for hereunder, and Plaintiff and Participating Class Members are not relying on  
21 any statement, representation, or calculation by Defendant or by the Settlement Administrator in this  
22 regard.

23 64. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES  
24 OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS  
25 AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY")  
26 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND  
27 NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES  
28 OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR

1 WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED  
2 OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES  
3 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE  
4 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS  
5 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX  
6 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS  
7 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY  
8 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY  
9 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO  
10 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE  
11 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER  
12 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF  
13 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER  
14 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE  
15 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY  
16 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS  
17 AGREEMENT.

18 65. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant  
19 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,  
20 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of  
21 action or right herein released and discharged.

22 66. Nullification of Settlement Agreement. If the Court does not grant Final Approval or  
23 conditions Final Approval on any material change to the Settlement (including, but not limited to, the  
24 scope of Released Class Claims and Released PAGA Claims, and/or the Court's decision to award less  
25 than the amounts requested for the Class Representative Enhancement Payment, Attorneys' Fees and  
26 Costs, Settlement Administrator Costs, and/or the PAGA Settlement Amount), the Parties will  
27 expeditiously work together in good faith to address the Court's concerns by revising the Agreement as  
28 necessary to obtain Final Approval.

67. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to request the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval Order for: (a) conditional certification of the Settlement Class for settlement purposes only, (b) preliminary approval of the proposed Settlement Agreement, (c) setting a date for a final fairness hearing. The Preliminary Approval Order will provide for the Class Notice to be sent to all Class Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include the proposed Notice of Class Action Settlement, attached as Exhibit A. Class Counsel will be responsible for drafting all documents necessary to obtain preliminary approval.

68. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement, and with the Court's permission, a final fairness hearing will be conducted to determine the Final Approval of the Settlement Agreement along with the amounts properly payable for: (a) Attorneys' Fees and Costs; (b) the Class Representative Enhancement Payment; (c) Individual Settlement Payments; (d) the Labor and Workforce Development Agency Payment; (e) all Settlement Administration Costs. The final fairness hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Class Counsel will be responsible for drafting all documents necessary to obtain final approval. Class Counsel shall provide drafts of these documents to Defense Counsel at least four (4) business days prior to the filing deadline. Class Counsel will make a good faith effort to resolve any disagreements concerning the final approval documents prior to filing. Class Counsel will also be responsible for drafting the attorneys' fees and costs application to be heard at the final approval hearing.

69. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the Court or after the final fairness hearing, the Parties will present the Judgment to the Court for its approval. After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) Settlement administration matters, and (c) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement. A copy of the Judgment will be posted to the Settlement Administrator's website.

1           70.     Release by Plaintiff. Upon the Funding Date, in addition to the claims being released by  
2 all Participating Class Members, Plaintiff will release and forever discharge the Released Parties, to the  
3 fullest extent permitted by law, of and from any and all claims, known and unknown, asserted and not  
4 asserted, which Plaintiff has or may have against the Released Parties as of the date of execution of this  
5 Settlement Agreement. To the extent the foregoing release is a release to which Section 1542 of the  
6 California Civil Code or similar provisions of other applicable law may apply, Plaintiff expressly waives  
7 any and all rights and benefits conferred upon them by the provisions of Section 1542 of the California  
8 Civil Code or similar provisions of applicable law which are as follows:

9                   A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
10                   CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
11                   EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE  
12                   AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY  
13                   AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED  
14                   PARTY.

15           71.     Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the  
16 terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth  
17 herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

18           72.     Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the  
19 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements  
20 may be deemed binding on the Parties. The Parties expressly recognize California Civil Code Section  
21 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is  
22 to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and  
23 the Parties agree that no such extrinsic oral or written representations or terms will modify, vary or  
24 contradict the terms of this Settlement Agreement.

25           73.     Amendment or Modification. No amendment, change, or modification to this Settlement  
26 Agreement will be valid unless in writing and signed, either by the Parties or their counsel, and approved  
27 by the Court.

28           74.     Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and

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

9 75. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,  
10 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

11 76. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto  
12 will be governed by and interpreted according to the laws of the State of California.

13 77. Execution and Counterparts. This Settlement Agreement is subject only to the execution  
14 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All  
15 executed counterparts and each of them, including electronic (e.g., DocuSign), facsimile, and scanned  
16 copies of the signature page, will be deemed to be one and the same instrument.

17 78. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this  
18 Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have arrived at this  
19 Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account  
20 all relevant factors, present and potential. The Parties further acknowledge that they are each represented  
21 by competent counsel and that they have had an opportunity to consult with their counsel regarding the  
22 fairness and reasonableness of this Settlement.

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

27 80. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class  
28 certification for purposes of this Settlement only; except, however, that Plaintiff or Class Counsel may

1 appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the Court,  
2 and either Party may appeal any court order that materially alters the Settlement Agreement's terms.

3 81. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to  
4 class action certification for purposes of the Settlement only. If, for any reason, the Settlement is not  
5 approved, the stipulation to certification will be void. The Parties further agree that certification for  
6 purposes of the Settlement is not an admission that class action certification is proper under the standards  
7 applied to contested certification motions and that this Settlement Agreement will not be admissible in  
8 this or any other proceeding as evidence that either (a) a class action should be certified or (b) Defendant  
9 is liable to Plaintiff or any Class Member, other than according to the Settlement's terms.

10 82. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute  
11 that has arisen between them and to avoid the burden, expense and risk of continued litigation. In  
12 entering into this Settlement, Defendant does not admit, and specifically denies, that it violated any  
13 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or  
14 any other applicable laws, regulations or legal requirements; breached any contract; violated or breached  
15 any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with  
16 respect to its employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any  
17 of the negotiations connected with it, will be construed as an admission or concession by Defendant of  
18 any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to  
19 enforce the terms of this Settlement, this Settlement Agreement and its terms and provisions will not be  
20 offered or received as evidence in any action or proceeding to establish any liability or admission on the  
21 part of Defendant or to establish the existence of any condition constituting a violation of, or a non-  
22 compliance with, federal, state, local or other applicable law.

23 83. No Public Comment: The Parties and their counsel agree that they will not issue any  
24 press releases, initiate any contact with the press, respond to any press inquiry, or have any  
25 communication with the press about the fact, amount or terms of the Settlement.

26 84. Confidentiality: The Parties and their counsel agree to the keep the terms of the  
27 settlement confidential until a motion for preliminary approval of this Settlement Agreement is filed with  
28 the Court.

1           85.     Waiver. No waiver of any condition or covenant contained in this Settlement Agreement  
2 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or  
3 constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

4           86.     Enforcement Actions. In the event that one or more of the Parties institutes any legal  
5 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement  
6 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be  
7 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including  
8 expert witness fees incurred in connection with any enforcement actions.

9           87.     Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and  
10 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed  
11 more strictly against one party than another merely by virtue of the fact that it may have been prepared  
12 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations  
13 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

14           88.     Representation By Counsel. The Parties acknowledge that they have been represented  
15 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and  
16 that this Settlement Agreement has been executed with the consent and advice of counsel. Further,  
17 Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

18           89.     All Terms Subject to Final Court Approval. All amounts and procedures described in  
19 this Settlement Agreement herein will be subject to final Court approval.

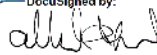
20           90.     Cooperation and Execution of Necessary Documents. All Parties will cooperate in good  
21 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this  
22 Settlement Agreement.

23           91.     Binding Agreement. The Parties warrant that they understand and have full authority to  
24 enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully  
25 enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in  
26 any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that  
27 otherwise might apply under federal or state law.  
28

**READ CAREFULLY BEFORE SIGNING**

Dated: 7/17/2023

**PLAINTIFF**

DocuSigned by:  
  
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Alberto Viramontes

**DEFENDANT CLS LANDSCAPE  
MANAGEMENT, INC.**

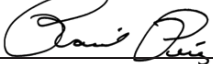
Dated: \_\_\_\_\_

Kevin Davis, President

**APPROVED AS TO FORM**

**CAPSTONE LAW APC**

Dated: 7/17/2023

By:   
Raul Perez

Attorneys for Plaintiff Alberto Viramontes

**BEST BEST & KRIEGER LLP**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Cecilia Martin

Attorneys for Defendant CLS Landscape  
Management, Inc.

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**READ CAREFULLY BEFORE SIGNING**

**PLAINTIFF**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Alberto Viramontes

**DEFENDANT CLS LANDSCAPE  
MANAGEMENT, INC.**

Dated: 7/17/23

\_\_\_\_\_  
Kevin Davis, President

**APPROVED AS TO FORM**

**CAPSTONE LAW APC**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Raul Perez

Attorneys for Plaintiff Alberto Viramontes

**BEST BEST & KRIEGER LLP**

Dated: July 19, 2023

By: \_\_\_\_\_  
Cecilia Martin

Attorneys for Defendant CLS Landscape  
Management, Inc.

# Exhibit A

*Viramontes v. CLS Landscape Management, Inc.*, No. CIVSB2134798  
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN BERNARDINO  
NOTICE OF CLASS ACTION SETTLEMENT

*You are not being sued. This notice affects your rights. Please read it carefully*

To: All persons who were employed by Defendant CLS Landscape Management, Inc. (“Defendant”) as non-exempt, hourly paid employees in the State of California at any time during the period from December 21, 2017 through August 10, 2023 (“Class Members”).

All persons who were employed by Defendant as non-exempt, hourly paid employees in the State of California at any time during the period from November 12, 2020 through August 10, 2023 (“PAGA Members”).

On \_\_\_\_\_, the Honorable David Cohn of the San Bernardino County Superior Court granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members of the settlement. **You have received this notice because Defendant’s records indicate that you are a Class Member, and therefore entitled to a payment from the settlement.**

**Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund.** The Final Fairness Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at \_\_\_\_:00 \_\_\_\_m. on \_\_\_\_\_, 2023 in Department S26 of the San Bernardino County Superior Court located at 247 W. Third St., San Bernardino, California 92415.

Please also note that the Final Fairness Hearing may be rescheduled by the Court to another date and/or time. Please visit [settlement website] for any scheduling changes.

If you move, you must send the Settlement Administrator your new address; otherwise, you may never receive your settlement payment. It is your responsibility to keep a current address on file with the Settlement Administrator.

**SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

|                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                          |
|----------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>You Don’t Have to Do Anything to Participate in the Settlement</b>      | If you do nothing, you will be deemed a “Participating Class Member,” and will be eligible for a payment from the Net Settlement Fund and PAGA Fund. In exchange, you will be bound by the terms of the proposed Settlement and give up your right to assert wage and hour claims and PAGA penalty claims against Defendant based on the facts alleged in the Action during the applicable Class Period and PAGA Period. |
| <b>You Can Opt-out of the Class Settlement but not the PAGA Settlement</b> | If you don’t want to fully participate in the proposed Settlement, you can opt-out of the class settlement by sending the Settlement Administrator a written Request for Exclusion. Once excluded, you will no longer be eligible for a payment from the Net Settlement Fund and will not be bound by the terms of the proposed class settlement.                                                                        |
| <b>The Opt-out Deadline is [DATE]</b>                                      | You cannot opt-out of the PAGA portion of the proposed Settlement. PAGA Members remain eligible to receive a payment from the PAGA Fund and must give up their rights to pursue PAGA penalty claims against Defendants based on the facts alleged in the Action during the PAGA Period.                                                                                                                                  |

|                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement</b><br><br><b>Written Objections Must be Submitted by [DATE]</b> | All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed class settlement, but not the PAGA settlement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>You Can Participate in the [DATE] Final Approval Hearing</b>                                                                                                | <p>The Court’s Final Approval Hearing is scheduled to take place on [DATE] in Department S26 of the San Bernardino County Superior Court located at 247 W. Third St., San Bernardino, California 92415. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing.</p> <p>If the Court grants final approval of the Settlement despite your objection, you will receive a payment from the Net Settlement Fund and you will be bound by the terms of the Settlement.</p> |

### **Summary of the Litigation**

Plaintiff Alberto Viramontes filed this wage and hour action against Defendant on December 21, 2021. After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. On May 9, 2023, the parties participated in a mediation with Jeffrey Fuchsman, Esq., an experienced and well-respected mediator of wage and hour actions. With Mr. Fuchsman’s guidance, the parties were able to negotiate a complete settlement of Plaintiff’s claims.

Counsel for Plaintiff, and the attorneys appointed by the Court to represent the class, Capstone Law APC (“Class Counsel”), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Defendant has denied, and continues to deny the factual and legal allegations in the case and believes that it has valid defenses to Plaintiff’s claims. By agreeing to settle, Defendant is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendant has agreed to settle the case as part of a compromise with Plaintiff.

### **Summary of The Proposed Settlement Terms**

Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for a Gross Settlement Amount of \$835,000. This amount is inclusive of: (1) individual settlement payments to all Participating Class Members; (2) a Class Representative Enhancement Payment of \$10,000 to Alberto Viramontes for their services on behalf of the class, and for a release of all claims arising out of their employment with Defendant; (3) \$278,333 in attorneys’ fees and up to \$10,000 in litigation costs and expenses; (4) a \$25,000 settlement of claims under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), inclusive of a \$18,750 payment to the California Labor and Workforce Development Agency (“LWDA”) in connection with the PAGA, and a \$6,250 payment (“PAGA Fund”) to all PAGA Members; and (5) reasonable Settlement Administrator’s fees and expenses currently estimated at \$\_. After deducting the above payments, a total of approximately \$\_ will be allocated to Class Members who do not opt out of the Settlement Class (“Net Settlement Fund”). Additionally, all PAGA Members will receive a proportional share of the \$6,250 PAGA Fund, regardless whether they opt out of the Settlement Class.

**Questions? Contact the Settlement Administrator toll free at 1-\*\*\*-\*\*\*-\*\*\*\***

**Payments from Net Settlement Fund.** Defendant will calculate the total number of Workweeks<sup>1</sup> worked by each Class Member from December 21, 2017 through August 10, 2023 (“Class Period”) and the aggregate total number of Workweeks worked by all Class Members during the Class Period. To determine each Class Member’s estimated share of the Net Settlement Fund, the Settlement Administrator will use the following formula: The Net Settlement Fund will be divided by the aggregate total number of Workweeks, resulting in the “Workweek Value.” Each Class Member’s share of the Net Settlement Fund will be calculated by multiplying each individual Class Member’s total number of Workweeks by the Workweek Value. The Individual Settlement Payment will be reduced by any required deductions for each Class Members as specifically set forth herein, including employee-side tax withholdings or deductions. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase each Participating Class Member’s share of the Net Settlement Fund according to the number of Workweeks worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Fund.

According to Defendant’s records, you worked during the Class Period in a non-exempt position for a total of \_\_\_\_ Workweeks. Accordingly, your estimated payment from the Net Settlement Fund is approximately \$ \_\_\_\_.

**Payments from PAGA Fund.** Defendant will calculate the total number of Workweeks worked by each PAGA Member from November 12, 2020 through August 10, 2023 (“PAGA Period”) and the aggregate total number of Workweeks worked by all PAGA Members during the PAGA Period. To determine each PAGA Member’s estimated share of the PAGA Fund, the Settlement Administrator will use the following formula: The PAGA Fund will be divided by the aggregate total number of Workweeks, resulting in the “PAGA Workweek Value.” Each PAGA Member’s share of the PAGA Fund will be calculated by multiplying each individual PAGA Member’s total number of Workweeks by the PAGA Workweek Value. A Request for Exclusion does not exclude a PAGA Member from the release of claims under California Labor Code §§ 2698, *et seq.* and the PAGA Member will receive their portion of the PAGA fund even if he or she submits a valid Request for Exclusion.

According to Defendant’s records, you worked during the PAGA Period in a non-exempt position for a total of \_\_\_\_ Workweeks. Accordingly, your estimated payment from the PAGA Fund is approximately \$ \_\_\_\_.

**Your Estimated Payment:** Based on the above, your estimated payment from the settlement is approximately \$ \_\_\_\_\_. If you believe the Workweek information provided above is incorrect, please contact the Settlement Administrator to dispute the calculation. You must attach all documentation in support of your dispute (such as check stubs, W2s, or letters from HR). All disputes must be postmarked or faxed on or before [insert date of Response Deadline] and must be sent to:

Settlement Administrator  
c/o \_\_\_\_\_  
Fax No. \_\_\_\_\_

If you dispute the information stated above, Defendant’s records will control unless you are able to provide documentation that establishes otherwise.

**Taxes on Settlement Payments.** IRS Forms W-2 and 1099 will be distributed to participating Class Members and the appropriate taxing authorities reflecting the payments they receive under the settlement. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this settlement, 20% of each settlement payment will be allocated as wages for which IRS Forms W-2 will be issued, and 80% will be allocated as non-wages for which IRS Forms 1099-MISC will be issued.

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<sup>1</sup> “Workweeks” means any week during which a Class Member worked for Defendant at least one day, during the Class Period. All Class Members will be credited with at least one Workweek during the Class Period, and all PAGA Members will be credited with at least one Workweek during the PAGA Period.

## **Your Options Under the Settlement**

### **Option 1 – Automatically Receive a Payment from the Settlement**

If you want to receive your payment from the settlement, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement funds. In addition, you will be deemed to have released or waived the Released Class Claims and Released PAGA Claims:

**Released Class Claims:** All claims, rights, demands, liabilities, and causes of action that were alleged, or reasonably could have been alleged, based on the same set of operative facts as those set forth in the operative complaint during the Class Period, including: (1) Cal. Lab. Code §§ 510 and 1198 (unpaid overtime); (2) Cal. Lab. Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (unpaid minimum wages); (3) Cal. Lab. Code §§ 226.7, 512(a), 516, and 1198 (failure to provide meal periods); (4) Cal. Lab. Code §§ 226.7, 516, and 1198 (failure to authorize and permit rest periods); (5) Cal. Lab. Code §§ 226.7, 516, 1198 and California Code of Regulations Title 8, Section 3395 (failure to provide heat recovery periods); (6) Cal. Lab. Code §§ 226(a), 1174(d), and 1198 (non-compliant wage statements and failure to maintain accurate payroll records); (7) Cal. Lab. Code §§ 226(b)-(c), 432, 1198, and 1198.5 (failure to produce employment records); (8) Cal. Lab. Code §§ 201 and 202 (failure to timely pay final wages not timely paid upon termination); (9) Section 204 (failure to timely pay wages during employment); (10) Cal. Lab. Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) (failure to provide reporting time pay); (11) Cal. Lab. Code § 2802 (unreimbursed business expenses); (12) Cal. Lab. Code §§ 2698, *et seq.* (PAGA); (13) California Business & Professions Code § 17200, *et seq.* (unlawful business practices); and (14) California Business & Professions Code § 17200, *et seq.* (unfair business practices).

**Released PAGA Claims:** All claims for civil penalties under California Labor Code §§ 2698, *et seq.*, that were brought or could reasonably have been brought based on the facts alleged in Plaintiff's initial (dated November 12, 2021) and amended (dated January 18, 2022) letters to the California LWDA during the PAGA Period.

### **Option 2 – Opt Out of the Settlement**

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class Action Settlement, decided not to participate in the settlement, and desire to be excluded from the settlement. The written request for exclusion must include your name, signature, address, telephone number, and last four digits of your Social Security Number. Sign, date, and mail the request for exclusion by First Class U.S. Mail or equivalent, to the address below.

Settlement Administrator

c/o \_\_\_\_\_  
\_\_\_\_\_

The Request for Exclusion must be postmarked or faxed not later than \_\_\_\_\_, 2023. If you submit a Request for Exclusion which is not postmarked or faxed by \_\_\_\_\_, 2023, your Request for Exclusion will be rejected, and you will be included in the settlement class.

If you choose **Option 2**, you will no longer be a Class Member, and you will:

- Not Receive a Payment from the Net Settlement Fund.
- Not release the Released Class Claims.
- If you are a PAGA Member, you will still release the Released PAGA Claims, and will receive a payment from the PAGA Fund.

**Questions? Contact the Settlement Administrator toll free at 1-\*\*\*-\*\*\*-\*\*\*\***

### **Option 3 – Object to the Settlement**

If you decide to object to the settlement because you find it unfair or unreasonable, you may submit a written objection stating why you object to the settlement, or you may instead appear at the Final Fairness Hearing to object to the Settlement. Written objections must provide: (1) your full name, signature, address, and telephone number, (2) a written statement of all grounds for the objection accompanied by any legal support for such objection; (3) copies of any papers, briefs, or other documents upon which the objection is based; and (4) a statement about whether you intend to appear at the Fairness Hearing. The objection must be mailed to the administrator at [administrator's address].

All written objections must be received by the administrator by not later than \_\_\_\_\_ 2023. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Fairness Hearing set for \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m. in the Superior Court of the State of California, for the County of San Bernardino and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement. If the Court overrules your objection, you will be deemed to have released the Released Class Claims and Released PAGA Claims.

### **Additional Information**

This Notice of Class Action Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Settlement Administrator or Class Counsel.

Raul Perez  
**Capstone Law APC**  
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Los Angeles, CA 90067  
Phone: 1 (888) 742-3038

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANT'S ATTORNEYS WITH INQUIRIES.