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on behalf of himself and all others similarly situated and aggrieved

Additional Counsel Listed on Next Page

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

DONALDO MUNOZ GARCIA, an
individual and on behalf of all others
similarly situated,

Plaintiff,

v.

ALL COUNTY ENVIRONMENTAL &
RESTORATION, INC., a California
corporation; DONALD MOSER, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 30-2021-01236384-CU-OE-
CXC

[Assigned for all purposes to the Hon. Peter
Wilson in Dept. CX 101]

CLASS ACTION

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

Action Filed: December 14, 2021
Trial Date: None set

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& RESTORATION, Inc. and DONALD MOSER

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2 This Joint Stipulation re: Class Action and Representative Action Settlement
3 (“Settlement” or “Agreement” or “Settlement Agreement”) is made by and between plaintiff
4 DONALDO MUNOZ GARCIA (“Plaintiff”) individually and on behalf of the Settlement Class,
5 on the one hand; and defendants ALL COUNTY ENVIRONMENTAL & RESTORATION,
6 INC., and DONALD MOSER (collectively “Defendants”), on the other hand, in the lawsuit
7 entitled *Munoz Garcia v. All County Environmental & Restoration, Inc., et al.*, filed in Orange
8 County Superior Court, Case No. 30-2021-01236384-CU-OE-CXC (the “Action”). Plaintiff and
9 Defendants shall be, at times, collectively referred to as the “Parties”. This Agreement is
10 intended by the Parties to resolve the claims, fully, finally, and forever as set forth herein, based
11 upon and subject to the terms and conditions of this Agreement.

12 **1. DEFINITIONS**

13 **A. “Action”** means *Munoz Garcia v. All County Environmental & Restoration, Inc.,*
14 *et al.*, filed in Orange County Superior Court, Case No. 30-2021-01236384-CU-OE-CXC.

15 **B. “Aggrieved Employees”** means Class Members working for Defendants during
16 the PAGA Period as non-exempt, hourly-paid employees in California.

17 **C. “Class Counsel”** means: David D. Bibiyan and Vedang J. Patel of Bibiyan Law
18 Group, P.C., as well as Michael Nourmand of The Nourmand Law Firm, APC. The term “Class
19 Counsel” shall be used synonymously with the term “Plaintiff’s Counsel.”

20 **D. “Class Period”** means the December 14, 2017 through the date the Court
21 preliminarily approves the Settlement, unless Defendant elects to shorten the Class Period
22 pursuant to this Agreement.

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1 **E. “Class Notice”** means and refers to the notice sent to Class Members after
2 preliminary approval of the Settlement in the manner described in Paragraph 9(A) of this
3 Agreement.

4 **F. “Court”** means the Superior Court of the State of California for the County of
5 Orange.

6 **G. “Final Approval Date”** means the later of: (1) the date the Court signs an Order
7 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an
8 objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals
9 have been filed, the date on which they have been resolved or exhausted.

10 **H. “Defendants”** means, collectively, All County Environmental & Restoration,
11 Inc., and Donald Moser.

12 **I. “Employer Taxes”** means employer-funded taxes and contributions imposed on
13 the wage portions of the Individual Settlement Payments under the Federal Insurance
14 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes
15 and contributions required of employers, such as for unemployment insurance.

16 **J. “General Release”** means the broader release of claims by Plaintiff, which is in
17 addition to Plaintiff’s limited release of claims as a Participating Class Member.

18 **K. “Gross Settlement Amount”** means a non-reversionary fund in the sum of Seven
19 Hundred Eighty-Six Thousand Two Hundred and Seven Dollars and Zero Cents (\$786,207.00),
20 which shall be paid by Defendants, from which all payments for the Individual Settlement
21 Payments to Participating Class Members, the Court-approved amounts for attorneys’ fees and
22 reimbursement of litigation costs and expenses to Class Counsel, Settlement Administration
23 Costs, the Service Award, the PAGA Payment, and the LWDA Payment shall be paid. It

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1 **L.** expressly excludes Employer Taxes, which shall be paid by Defendants separate,
2 apart, and in addition to the Gross Settlement Amount.

3 **M. “Individual PAGA Payment”** means a payment made to an Aggrieved
4 Employee for his or her share of the PAGA Payment, which may be in addition to his or her
5 Individual Settlement Share if he or she is also a Participating Class Member.

6 **N. “Individual Settlement Payment”** means a payment of the Participating
7 Individual Settlement Share after reduction for the employee’s share of payroll taxes and other
8 withholdings to a Participating Class Member of his or her net share of the Net Settlement
9 Amount.

10 **O. “Individual Settlement Share”** means the gross amount of the Net Settlement
11 Amount that a Participating Class Member is projected to receive based on the number of
12 Workweeks that he or she worked as a Settlement Class Member during the Class Period, which
13 shall be reflected in his or her Class Notice.

14 **P. “LWDA Payment”** means the payment to the State of California Labor and
15 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the
16 PAGA Settlement Amount (i.e., \$30,000).

17 **Q. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
18 that is available for distribution to the Participating Class Members after deductions for the Court-
19 approved allocations for Settlement Administration Costs, a Service Award to Plaintiffs, an
20 award of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, the
21 LWDA Payment, and the PAGA Payment.

22 **R. “Operative Complaint” or “Complaint”** means the Second Amended
23 Complaint filed with the Court.

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S. **“PAGA Payment** is the 25% portion of the PAGA Settlement Amount, (i.e., \$10,000) that will be paid to Aggrieved Employees on a *pro rata* basis based on the Workweeks worked as non-exempt, hourly-paid employees in California in the PAGA Period, which would be in addition to their Individual Settlement Payment if they are Participating Class Members, as well.

T. “PAGA Period” means the period from December 14, 2020 through the end of the Class Period.

U. **“PAGA Settlement Amount”** means the amount of Forty Thousand Dollars and Zero Cents (\$40,000.00) which the Parties agree shall be allocated toward the resolution of the PAGA claim which is to be paid from the Gross Settlement Amount. Pursuant to Labor Code section 2699.3, Seventy-Five percent (75%) of the PAGA Settlement Amount, or Thirty Thousand Dollars and Zero Cents (\$30,000.00), will be paid to the LWDA (*i.e.*, the LWDA Payment) and Twenty-Five percent (25%) of the PAGA Settlement Amount, or Ten Thousand Dollars and Zero Cents (\$10,000.00), will be paid to Aggrieved Employees on a *pro rata* basis based on the Workweeks worked for Defendants as a non-exempt, hourly-paid employee in California in the PAGA Period (*i.e.* the PAGA Payment).

V. “Participating Class Members” means all Settlement Class Members who do not submit a timely and valid Request for Exclusion.

W. “Participating Individual Settlement Share” means the gross amount of the Net Settlement Amount that a Participating Class Member is eligible to receive based on the number of Workweeks that he or she worked as a Settlement Class Member during the Class Period once all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she may be entitled if he or she is also an Aggrieved Employee.

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1 **X. “Plaintiff”, “Named Plaintiff” or “Class Representative”** shall refer to
2 Plaintiff Donaldo Munoz Garcia.

3 **Y. “Preliminary Approval Date”** means the date on which the Court enters an
4 Order granting preliminary approval of the Settlement.

5 **Z. “Released Parties”** shall mean Defendants and each of their past, present, and
6 future respective subsidiaries, dba’s, affiliates, parents, trusts, trust funds, investors, client,
7 contracting party, joint employer, insurers and reinsurers, and company-sponsored employee
8 benefit plans of any nature and their successors and predecessors in interest, including all of their
9 respective owners, partners, members, officers, directors, shareholders, employees, agents,
10 managing agents, principals, heirs, representatives, accountants, auditors, consultants, attorneys,
11 administrators, fiduciaries, trustees, service providers .

12 **AA. “Response Deadline”** means the deadline for Settlement Class Members to mail
13 any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator,
14 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English
15 and Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In
16 such an instance, the Response Deadline shall be fifteen (15) calendar days from the re-mailing,
17 or forty-five (45) calendar days from the date of the initial mailing, whichever is later. The date
18 of the postmark shall be the exclusive means for determining whether a Request for Exclusion,
19 Objection, or Workweek Dispute was submitted by the Response Deadline.

20 **BB. “Request for Exclusion”** means a written request to be excluded from the
21 Settlement Class pursuant to Paragraph 9(C) below.

22 **CC. “Service Award”** means monetary amounts to be paid to Plaintiff of up to Seven
23 Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00), which subject to Court approval,
24 will be paid out of the Gross Settlement Amount.

DD. “Settlement Administration Costs” means all costs incurred by the Settlement Administrator in administration of the Settlement, including, but not limited to, translating the Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English and Spanish, calculating Individual Settlement Shares, Individual Settlement Payments, Individual PAGA Payments, and Participating Individual Settlement Shares, as well as associated taxes and withholdings, providing declarations, generating Individual Settlement Payment checks and related tax reporting forms, doing administrative work related to unclaimed checks, transmitting payment to Class Counsel for the Court-approved amounts for attorneys’ fees and reimbursement of litigation costs and expenses, to Plaintiff for his Service Award, and to the LWDA for the LWDA Payment, providing weekly reports of opt-outs, objections and related information, and any other actions of the Settlement Administrator as set forth in this Agreement, all pursuant to the terms of this Agreement. The Settlement Administration Costs are estimated not to exceed \$7,990.00. If the actual amount of the Settlement Administration Costs is less than \$7,990.00, the difference between \$7,990.00 and the actual Settlement Administration Costs shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed \$7,990.00 then such excess will be paid solely from the Gross Settlement Amount and Defendants will not be responsible for paying any additional funds in order to pay these additional costs.

EE. “Settlement Administrator” means the Third-Party Administrator, APEX Class Action Administration (“Apex”), mutually agreed upon by the Parties that will be responsible for the administration of the Settlement including, without limitation, translating the Class Notice in Spanish, the distribution of the Gross Settlement Amount, and related matters under this Agreement.

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1 **FF.** “Settlement Class”, “Settlement Class Members” or “Class Members” means
2 all current and former non-exempt, hourly-paid employees who worked in California for
3 Defendants at any time during the Class Period.

4 **GG.** “Workweeks” means the number of weeks that a Class Member or Aggrieved
5 Employee was employed by and worked at least one shift during that workweek for the
6 Defendants in a non-exempt, hourly-paid position in California, based on hire dates, re-hire dates
7 (as applicable), and termination dates (as applicable).

8 **2. BACKGROUND**

9 **A.** On December 15, 2021, Plaintiff filed with the LWDA and served on Defendants
10 a notice under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the
11 LWDA to recover civil penalties on behalf of Aggrieved Employees for various Labor Code
12 violations (“PAGA Notice”).

13 **B.** On December 14, 2021, Plaintiff filed a putative wage-and-hour class action
14 against Defendants in the Orange County Superior Court, Case No. 30-2021-01236384-CU-OE-
15 CXC alleging: failure to pay overtime, failure to provide minimum wages; failure to provide
16 meal periods, failure to provide rest breaks; waiting time penalties; wage statement violations;
17 failure to timely pay wages during employment; failure to indemnify, and unfair competition (the
18 “Action”).

19 **C.** On March 1, 2022, Plaintiff filed a First Amended Class and Representative
20 Action Complaint in the Action, adding a single cause of action for civil penalties pursuant to
21 PAGA for the various alleged Labor Code violations specified in the PAGA Notice. On
22 September 23, 2022, Plaintiff filed a second amended complaint in the action to consolidate with
23 a separately filed lawsuit in Riverside County Superior Court. The second amended complaint
24 is the “Operative Complaint.”
25

1 **D.** On October 19, 2022, the Parties agreed to exchange informal discovery and
2 attend an early mediation, in which Plaintiff was provided with, among other things: (1) time and
3 payroll records for approximately 25% of the estimated 252 Class Members (i.e., current and
4 former non-exempt employees working for Defendants in California) between December 14,
5 2017 and January 31, 2023, which Plaintiff has extrapolated through the date of mediation (i.e.,
6 the “Class Period”); (2) relevant wage and hour policy documents and employee handbooks in
7 effect during the Class Period; and (3) plaintiff’s personnel records and employment files.

8 **E.** On January 31, 2023, the Parties participated in a full-day mediation before Marc
9 Feder, Esquire, a well-regarded mediator experienced in mediating complex labor and
10 employment matters. With the aid of the mediator’s evaluation, the Parties reached the
11 Settlement described herein to resolve the Action.

12 **F.** Class Counsel has conducted significant investigation of the law and facts relating
13 to the claims asserted in the Action and the PAGA Notice, and have concluded that that the
14 Settlement set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement
15 Class, taking into account the sharply contested issues involved, the expense and time necessary
16 to litigate the Action through trial and any appeals, the risks and costs of further litigation of the
17 Action, the risk of an adverse outcome, the uncertainties of complex litigation, the information
18 learned through informal discovery regarding Plaintiff’s allegations, and the substantial benefits
19 to be received by Settlement Class Members.

20 **G.** Defendants have concluded that, because of the substantial expense of defending
21 against the Action, the length of time necessary to resolve the issues presented herein, the
22 inconvenience involved, and the concomitant disruption to its business operations, it is in its best
23 interest to accept the terms of this Agreement. Defendants deny each of the allegations and
24 claims asserted against it in the Action and the PAGA Notice. However, Defendants nevertheless
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1 desire to settle the Action for the purpose of avoiding the burden, expense and uncertainty of
2 continuing litigation and for the purpose of putting to rest the controversies engendered by the
3 Action.

4 **H.** This Agreement is intended to and does effectuate the full, final, and complete
5 resolution of all Class Released Claims of Plaintiff and Participating Class Members, and all
6 PAGA Released Claims of Plaintiff and, to the extent permitted by law, of the State of California
7 and Aggrieved Employees.

8 **3. JURISDICTION**

9 The Court has jurisdiction over the Parties and the subject matter of the Action. The
10 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
11 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
12 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
13 pursuant to California Rule of Court, rule 3.769, subdivision (h).

14 **4. STIPULATION OF CLASS CERTIFICATION**

15 The Parties stipulate to the certification of the Settlement Class under this Agreement for
16 purposes of settlement only.

17 **5. MOTIONS FOR APPROVAL OF SETTLEMENT**

18 After full execution of this Agreement, Plaintiff will move for an order granting
19 preliminary approval of the Settlement, approving and directing the mailing of the proposed Class
20 Notice attached hereto as **Exhibit “A”**, conditionally certifying the Settlement Class for
21 settlement purposes only, and approving the deadlines proposed by the Parties for the submission
22 of Requests for Exclusion, Workweek Disputes, and Objections. If and when the Court
23 preliminarily approves the Settlement, and after administration of the Class Notice in a manner
24 consistent with the Court’s Preliminary Approval Order, Plaintiff will move for an order finally
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1 approving the Settlement and seek entry of a Judgment in line with this Settlement. The Parties
2 may both respond to any Objections lodged to final approval of the Settlement up to five (5) court
3 days before the Final Approval Hearing.

4 **6. STATEMENT OF NO ADMISSION**

5 Defendants deny any wrongdoing of any sort and further deny any liability to Plaintiff
6 and the Settlement Class with respect to any claims or allegations asserted in the Action and the
7 PAGA Notice. This Agreement shall not be deemed an admission by Defendants of any claims
8 or allegations asserted in the Action or the PAGA Notice. Except as set forth elsewhere herein,
9 in the event that this Agreement is not approved by the Court, or any appellate court, is
10 terminated, or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived,
11 limited or affected in any way any claims, rights or remedies, or defenses in the Action or the
12 PAGA Notice, and Defendants will not be deemed to have waived, limited, or affected in any
13 way any of their objections or defenses in the Action and the PAGA Notice. The Parties shall be
14 restored to their respective positions in the Action prior to the entry of this Settlement.

15 **7. RELEASE OF CLAIMS**

16 **A. Release by All Participating Class Members.**

17 **B.** Effective only upon the entry of an Order granting Final Approval of the
18 Settlement, entry of Judgment, and payment by Defendants to the Settlement Administrator of
19 the full Gross Settlement Amount and Employers' Taxes necessary to effectuate the Settlement,
20 Plaintiff and all Participating Class Members release all claims against the Released Parties
21 asserted in the Operative Complaint filed in the Action, or any and all claims that could have
22 been asserted against the Released Parties based on the factual allegations in the Operative
23 Complaint. For the duration of the Class Period, the release includes the following claims which
24 were alleged in the Operative Complaint: (1) all claims for failure to pay overtime wages; (2) all
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1 claims for failure to pay minimum wages; (3) all claims for failure to provide meal periods or
2 compensation in lieu thereof; (4) all claims for failure to provide rest periods or compensation in
3 lieu thereof; (5) all claims for failure to pay all wages due upon separation from employment; (6)
4 all claims for failure to issue accurate and compliant wage statements; and (7) all claims for
5 failure to indemnify; and (8) all claims asserted through California Business & Professions Code
6 section 17200, *et seq.* arising out of the Labor Code violations referenced in the Complaint (the
7 “Class Released Claims”).

8 **C. Release by All Aggrieved Employees**

9 For Aggrieved Employees, and, to the extent permitted by law, the State of California,
10 the release includes for the duration of the PAGA Period, all claims asserted in the PAGA Notice
11 and thereafter alleged in the Operative Complaint for civil penalties pursuant to PAGA, or that
12 could have been alleged based on the factual allegations in the PAGA Notice and Operative
13 Complaint, pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 in
14 connection with alleged violations of Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210,
15 226, 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5,
16 1194, 1197, 1197.5, 1198.5, 2699, 2802, and 2810.5 (the “PAGA Released Claims”). The Class
17 Released Claims and PAGA Released Claims shall be referred to herein as the “Released
18 Claims”.

19 **D. Claims Not Released**

20 The releases above expressly exclude all other claims, including claims for vested
21 benefits, wrongful termination, unemployment insurance, disability, social security, workers’
22 compensation, and any other claims outside of the Class Released Claims of Participating Class
23 Members arising during the Class Period and the PAGA Released Claims of Aggrieved

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1 Employees (and, to the extent permitted by law, the State of California) arising outside of the
2 PAGA Period.

3 **E. General Release.**

4 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
5 of Judgment, and payment by Defendants to the Settlement Administrator selected of the full
6 Gross Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, in
7 addition to the Released Claims (defined herein), Plaintiff, and Plaintiff's respective former and
8 present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns
9 generally, release the additional following General Release: Plaintiff releases the Released
10 Parties from all claims, transactions, occurrences, demands, rights, liabilities and causes of action
11 of every nature and description whatsoever, known or unknown, asserted or that might have been
12 asserted, whether in tort, contract, or for violation of any state or federal statute, rule, law or
13 regulation arising out of, relating to, or in connection with any act or omission of the Released
14 Parties through the date of full execution of this Agreement in connection with Plaintiff's
15 employment with Defendants or the termination thereof, except for any and all other claims that
16 may not be released as a matter of law through this Agreement. This General Release includes,
17 without limitation: (1) all claims for violation of any federal, state or local statute, ordinance or
18 regulation relating to employment benefits, leaves of absence, or discrimination, harassment,
19 retaliation, or whistleblowing in employment, specifically including, without limitation, the
20 California Fair Employment and Housing Act, the California Family Rights Act, Title VII of the
21 Civil Rights Act of 1964, the Family and Medical Leave Act, the Age Discrimination in
22 Employment Act, the Older Workers Benefit Protection Act, the Genetic Information
23 Nondiscrimination Act, the Americans with Disabilities Act, and the Employee Retirement
24 Income Security Act, the Consolidated Omnibus Budget Reconciliation Act, the Securities Act,
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1 the Immigration Reform and Control Act the Worker Adjustment and Retraining Notification
2 Act of 1988, the California Worker Adjustment and Retraining Notification Act, the Uniformed
3 Service Employment and Reemployment Rights Act, and any regulation of any administrative
4 agency or governmental authority relating to employment benefits or discrimination or
5 harassment or retaliation in employment; (2) all claims for failure to pay minimum or overtime
6 wages, failure to timely pay wages, failure to provide accurate itemized wage statements, failure
7 to maintain accurate records, failure to reimburse business expenses, failure to provide meal
8 periods or rest breaks, failure to provide paid sick leave, failure to post notice of paydays and
9 time and place of payment, and any claim for violations of the California Labor Code,
10 California's Business and Professions Code § 17200 et seq., and the applicable California
11 Industrial Welfare Commission Wage Order; (3) any non-statutory tort or contractual claim,
12 including all claims for breach of oral, implied or written contract, breach of implied covenant
13 of good faith and fair dealing, negligent or intentional infliction of emotional distress, and
14 conversion; (4) all claims for wrongful termination of employment; (5) all claims for wages,
15 penalties and/or benefits; and (6) all claims for attorneys' fees and costs. Plaintiff's General
16 Release does not extend to any claims or actions to enforce this Agreement, or to any claims for
17 vested benefits, unemployment benefits, disability benefits, social security benefits, workers'
18 compensation benefits that arose at any time. Plaintiff acknowledges that he may discover facts
19 or law different from, or in addition to, the facts or law that Plaintiff now know or believe to be
20 true but agree, nonetheless, that Plaintiff's General Release shall be and remain effective in all
21 respects, notwithstanding such different or additional facts or their discovery of them.

22 To the extent of the General Release provided herein, Plaintiff stipulates and agrees that,
23 upon entry of an Order granting Final Approval of the Settlement, entry of Judgment, and
24 payment by Defendants to the Settlement Administrator selected of the full Gross Settlement
25

Amount and Employers' Taxes necessary to effectuate the Settlement, he shall have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

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

8. SETTLEMENT ADMINISTRATOR

A. Plaintiff and Defendants, through their respective counsel, have selected APEX Class Action Administration ("Apex") to administer the Settlement, which includes but is not limited to translating the Class Notice to Spanish, distributing and responding to inquiries about the Class Notice and calculating all amounts to be paid from the Gross Settlement Amount. Charges and expenses of the Settlement Administrator, currently estimated to be \$7,990.00 will be paid from the Gross Settlement Amount. If the actual amount of the Settlement Administration Costs is less than \$7,990.00., the difference between \$7,990.00 and the actual Settlement Administration Costs shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed \$7,990.00, then such excess will be paid solely from the Gross Settlement Amount and Defendants will not be responsible for paying any additional funds in order to pay these additional costs.

9. NOTICE, WORKWEEK DISPUTE, OBJECTION, AND EXCLUSION

PROCESS

A. Notice to the Settlement Class Members

(1) Within twenty-one (21) calendar days after the Preliminary Approval Date, Defendants' Counsel shall provide the Settlement Administrator with information with

1 respect to each Settlement Class Member, including his or her: (1) name; (2) last known
2 address(es) currently in Defendants' possession, custody, or control; (3) last known Social
3 Security Number(s) in Defendants' possession, custody, or control; and (4) the dates of
4 employment (*i.e.*, hire dates, and, if applicable, re-hire date(s) and/or separation date(s)) for each
5 Settlement Class Member ("Class List"). The Settlement Administrator shall perform an address
6 search using the United States Postal Service National Change of Address ("NCOA") database
7 and update the addresses contained on the Class List with the newly-found addresses, if any.
8 Within seven (7) calendar days, or soon thereafter, of receiving the Class List from Defendants,
9 the Settlement Administrator shall mail the Class Notice in English and Spanish to the Settlement
10 Class Members via first-class regular U.S. Mail using the most current mailing address
11 information available.

12 (2) The Class Notice will set forth:

- 13 (a) the Settlement Class Member's estimated Individual
14 Settlement Share and Individual PAGA Payment, and
15 the basis for each;
- 16 (b) the information required by California Rule of Court,
17 rule 3.766, subdivision (d);
- 18 (c) the material terms of the Settlement;
- 19 (d) the proposed Settlement Administration Costs;
- 20 (e) the definition of the Settlement Class;
- 21 (f) a statement that the Court has preliminarily approved
22 the Settlement;

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- 1 (g) how the Settlement Class Member can obtain
2 additional information, including contact information
3 for Class Counsel;
- 4 (h) information regarding opt-out and objection
5 procedures;
- 6 (i) the date and location of the Final Approval Hearing;
7 and
- 8 (j) that the Settlement Class Member must notify the
9 Settlement Administrator no later than the Response
10 Deadline if the Settlement Class Member disputes the
11 accuracy of the number of Workweeks as set forth on
12 his or her Class Notice (“Workweek Dispute”). If a
13 Settlement Class Member fails to timely dispute the
14 number of Workweeks attributed to him or her in
15 conformity with the instructions in the Class Notice,
16 then he or she shall be deemed to have waived any
17 objection to its accuracy and any claim to any
18 additional settlement payment based on different data.

19 (3) If a Class Notice from the initial notice mailing is returned as
20 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
21 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
22 calendar days of receipt of the returned Class Notice, by undertaking skip trace. If the Settlement
23 Administrator is successful in obtaining a new address, it will re-mail the Class Notice to the
24 Settlement Class Member within three (3) business days. Further, any Class Notices that are
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1 returned to the Settlement Administrator with a forwarding address before the Response Deadline
2 shall be promptly re-mailed to the forwarding address affixed thereto.

3 (4) No later than seven (7) calendar days from the Response Deadline, the
4 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
5 completion of the notice process, including the number of attempts to obtain valid mailing
6 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
7 and copies of all Requests for Exclusion and Objections received by the Settlement
8 Administrator.

9 **B. Objections.**

10 Only Participating Class Members may object to the Settlement. In order for any
11 Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must
12 do so by mailing a written objection to the Settlement Administrator at the address or phone
13 number provided on the Class Notice no later than the Response Deadline. The Settlement
14 Administrator shall email a copy of the Objection forthwith to Class Counsel and Defendants'
15 counsel and attach copies of all Objections to the Declaration it provides Class Counsel, which
16 Class Counsel shall file in support of Plaintiff's Motion for Final Approval. The Objection
17 should set forth in writing: (1) the Objector's name; (2) the Objector's address; (3) the last four
18 digits of the Objector's Social Security Number; (4) the Objector's signature; (5) a statement of
19 whether the Objector plans to appear at the Final Approval Hearing; and (6) the reason(s) for the
20 Objection, along with whatever legal authority, if any, the Objector asserts in support of the
21 Objection. If a Settlement Class Member objects to the Settlement, the Settlement Class Member
22 will remain a member of the Settlement Class and if the Court approves this Agreement, the
23 Settlement Class Member will be bound by the terms of the Settlement in the same way and to
24 the same extent as a Settlement Class Member who does not object. The date of mailing of the
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1 Class Notice to the objecting Settlement Class Member shall be conclusively determined
2 according to the records of the Settlement Administrator. Settlement Class Members need not
3 object in writing to be heard at the Final Approval Hearing; they may object or comment in
4 person at the hearing at their own expense. Class Counsel and Defendants' Counsel may respond
5 to any objection lodged with the Court up to five (5) court days before the Final Approval
6 Hearing.

7 **C. Requesting Exclusion.**

8 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the
9 Settlement by mailing a written request to be excluded from the Settlement ("Request for
10 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
11 To be valid, a Request for Exclusion must include: (1) the Class Member's name; (2) the Class
12 Member's Social Security Number; (3) the Class Member's signature; and (4) any statement of
13 similar meaning standing for the proposition that the Class Member does not wish to participate
14 in the Settlement, or the following statement: "Please exclude me from the Settlement Class in
15 the *Munoz Garcia v. All County Environmental & Restoration, Inc., et al.* matter". The
16 Settlement Administrator shall immediately provide copies of all Requests for Exclusion to Class
17 Counsel and Defendants' Counsel and shall report the Requests for Exclusions that it receives,
18 to the Court, in its declaration to be provided in advance of the Final Approval Hearing. Any
19 Settlement Class Member who requests exclusion using this procedure will not be entitled to
20 receive any payment from the Settlement and will not be bound by the Settlement Agreement or
21 have any right to object to, appeal, or comment on the Settlement. Any Settlement Class Member
22 who does not opt out of the Settlement by submitting a timely and valid Request for Exclusion
23 will be bound by all terms of the Settlement, including those pertaining to the Released Claims,
24 as well as any Judgment that may be entered by the Court if Final Approval of the Settlement is
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1 granted. A Settlement Class Member cannot submit both a Request for Exclusion and an
2 objection. If a Settlement Class Member submits an Objection and a Request for Exclusion, the
3 Request for Exclusion will control and the Objection will be overruled. Settlement Class
4 Members who worked during the PAGA Period as Aggrieved Employees that submit a valid
5 Request for Exclusion will still be deemed Aggrieved Employees, will still receive their
6 Individual PAGA Payments, and will be bound by the release of the PAGA Released Claims.

7 **D. Disputes Regarding Settlement Class Members' Workweek Data.**

8 Each Settlement Class Member may dispute the number of Workweeks attributed to him
9 or her on his or her Class Notice ("Workweek Dispute"). Any such disputes must be mailed to
10 the Settlement Administrator by the Settlement Class Member, postmarked on or before the
11 Response Deadline. The Settlement Administrator shall immediately provide copies of all
12 disputes to counsel for Defendants and shall immediately attempt to resolve all such disputes
13 directly with relevant Settlement Class Member(s) with the assistance of Defendants' Counsel.
14 If the dispute cannot be resolved in this manner, the Court shall adjudicate the dispute.

15 **10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL**
16 **PAGA PAYMENTS**

17 Individual Settlement Payments will be calculated and distributed to Participating Class
18 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
19 Members' respective number of Workweeks during the Class Period. Individual PAGA
20 Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees
21 from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective number
22 of Workweeks during the PAGA Period. Specific calculations of the Individual Settlement
23 Shares and Individual PAGA Payments to Aggrieved Employees will be made as follows:

24 **A.** The Settlement Administrator will determine the total number of Workweeks
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1 worked by each Settlement Class Member during the Class Period (“Class Member’s
2 Workweeks”), as well as the aggregate number of Workweeks worked by all Settlement Class
3 Members during the Class Period (“Class Workweeks”). Additionally, the Settlement
4 Administrator will determine the total number of Workweeks worked by each Aggrieved
5 Employee during the PAGA Period (“Aggrieved Employee’s Workweeks”), as well as the
6 aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period
7 (“PAGA Workweeks”).

8 **B.** To determine each Settlement Class Member’s Individual Settlement Share, the
9 Settlement Administrator will use the following formula: Individual Settlement Share =
10 $(\text{Settlement Class Member's Workweeks} \div \text{Class Workweeks}) \times \text{Net Settlement Amount}$.

11 **C.** To determine each Participating Class Member’s Participating Individual
12 Settlement Share, the Settlement Administrator will determine the aggregate number of
13 Workweeks worked by all Participating Class Members during the Class Period (“Participating
14 Class Workweeks”) and use the following formula: Participating Individual Settlement Share =
15 $(\text{Participating Class Member's Workweeks} \div \text{Participating Class Workweeks}) \times \text{Net Settlement}$
16 Amount.

17 **D.** The net amount (after reduction for the employee’s share of payroll taxes and
18 other withholdings) of the Participating Individual Settlement Share is to be paid out
19 to Participating Class Members by way of check and is referred to as “Individual Settlement
20 Payment(s)”.

21 **E.** To determine each Aggrieved Employee’s Individual PAGA Payment, the
22 Settlement Administrator will use the following formula: Aggrieved Employee’s Individual
23 PAGA Payment = $(\text{Aggrieved Employee's Workweeks} \div \text{PAGA Workweeks}) \times \$10,000.00$ (the
24 PAGA Payment).

1 **F.** Individual Settlement Payments and Individual PAGA Payments shall be paid
2 to Participating Class Members and/or Aggrieved Employees by way of check. When a
3 Participating Class Member is also an Aggrieved Employee, one check may be issued that
4 aggregates both the Individual Settlement Payment and the Individual PAGA Payment

5 **11. DISTRIBUTION OF PAYMENTS**

6 **A. Distribution of Individual Settlement Payments.**

7 Participating Class Members will receive an Individual Settlement Payment and
8 Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement Payment
9 and Individual PAGA Payment checks shall remain valid and negotiable for one hundred and
10 eighty (180) calendar days after the date of their issuance. Within seven (7) calendar days after
11 expiration of the 180-day period, checks for such payments shall be canceled and funds
12 associated with such checks shall be considered unpaid, unclaimed or abandoned cash residue
13 pursuant to Code of Civil Procedure section 384 (“Unpaid Residue”). The Unpaid Residue plus
14 accrued interest, if any, as provided in Code of Civil Procedure section 384, shall be transmitted
15 to Legal Aid at Work for use in Orange County. The Settlement Administrator shall prepare a
16 report regarding the distribution plan pursuant to Code of Civil Procedure section 384 and the
17 report shall be presented to the Court by Class Counsel along with a proposed amended judgment
18 that is consistent with the provisions of Code of Civil Procedure section 384.

19 **B. Funding of Settlement.**

20 Defendants shall, within thirty (30) calendar days of Final Approval Date, make payment
21 of the Gross Settlement Amount and Employer Taxes to the Settlement Administrator pursuant
22 to Internal Revenue Code section 1.468B-1 for deposit in an interest-bearing qualified settlement
23 account (“QSA”) with an FDIC insured banking institution, for distribution in accordance with
24 this Agreement and the Court’s Orders and subject to the conditions described herein.

1 **C. Time for Distribution.**

2 Within seven (7) calendar days after payment of the full Gross Settlement Amount and
3 Employer Taxes by Defendants, or as soon thereafter as practicable, the Settlement Administrator
4 shall distribute all payments due from the QSA, including: (1) the Service Award to Plaintiff; (2)
5 the Attorneys' Fees and Cost Award to be paid to Class Counsel; (3) the Settlement Administrator
6 Costs; (4) the LWDA Payment; and (5) Individual PAGA Payments to Aggrieved Employees;
7 and (6) Individual Settlement Payments to Participating Class Members, less applicable taxes
8 and withholdings. All interest accrued shall be for the benefit of the Class Members and
9 distributed on a *pro rata* basis to Participating Class Members based on the number of
10 Workweeks worked by them in the Class Period.

11 **12. ATTORNEYS' FEES AND LITIGATION COSTS**

12 Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys'
13 fees of up to 35% of the Gross Settlement Amount, which amounts to Two Hundred Seventy
14 Five Thousand One Hundred Seventy Two Dollars and Forty-Five Cents (\$275,172.45)
15 ("Attorneys' Fees"). Class Counsel shall further apply for, and Defendants shall not oppose, an
16 application or motion by Class Counsel for reimbursement of actual costs associated with Class
17 Counsel's prosecution of this matter as set forth by declaration testimony in an amount up to
18 Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) ("Cost Award"). Awards of the
19 Attorneys' Fees and Cost Award shall be paid out of the Gross Settlement Amount, for all past
20 and future attorneys' fees and costs necessary to prosecute, settle, and obtain Final Approval of
21 the settlement in Action. The "future" aspect of the amounts stated herein includes, without
22 limitation, all time and expenses expended by Class Counsel (including any appeals therein).
23 There will be no additional charge of any kind to either the Settlement Class Memembrs or request
24 for additional consideration from Defendants for such work, unless, Defendants fail to fully fund
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the Gross Settlement Amount and Employer Taxes and further efforts are necessary from Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce the Agreement. Should the Court approve an award of Attorneys' Fees and/or Cost Award in amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

13. SERVICE AWARD TO PLAINTIFF

Named Plaintiff shall seek, and Defendants shall not oppose, a Service Award in an amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff, for participation in and assistance with the Action. Any Service Award awarded to Plaintiff shall be paid from the Gross Settlement Amount and shall be reported on an IRS Form 1099. If the Court approves the Service Award to Plaintiff in less than the amounts sought herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

14. TAXATION AND ALLOCATION

a. Each Individual Settlement Share shall be allocated as follows: 20% as wages (to be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an IRS Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties agree that the employees' share of taxes and withholdings with respect to the wage-portion of the Individual Settlement Share will be withheld from the Individual Settlement Share in order to yield the Individual Settlement Payment. The amount of federal income tax withholding will be based upon a flat withholding rate for supplemental wage payments in accordance with Treasury Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made pursuant to applicable state and/or local withholding codes or regulations.

b. Forms W-2 and/or Forms 1099 will be distributed by the Settlement Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the

1 “Code”) and consistent with this Agreement. If the Code, the regulations promulgated
2 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
3 set forth in this Section may be modified in a manner to bring Defendants into compliance with
4 any such changes.

5 c. All Employer Taxes shall be paid by Defendants separate, apart, and in addition
6 to the Gross Settlement Amount. Defendants shall remain liable to pay the employer’s share of
7 payroll taxes as described above.

8 d. Neither Counsel for Plaintiff nor Defendants intend anything contained in this
9 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
10 be relied upon as such within the meaning of United States Treasury Department Circular 230
11 (31 C.F.R. Part 10, as amended) or otherwise.

12 **15. PRIVATE ATTORNEYS’ GENERAL ACT ALLOCATION**

13 The Parties agree to allocate Forty Thousand Dollars and Zero Cents (\$40,000.00) of the
14 Gross Settlement Amount toward PAGA penalties (i.e., the PAGA Settlement Amount).
15 Pursuant to the PAGA, seventy-five percent (75%) of the PAGA Settlement Amount
16 (\$30,000.00) will be paid to the LWDA and twenty-five percent (25%) (\$10,000.00) will be
17 distributed to Aggrieved Employees on a *pro rata* basis based upon their respective Workweeks
18 worked as Aggrieved Employees during the PAGA Period.

19 **16. COURT APPROVAL**

20 This Agreement is contingent upon an order by the Court granting Final Approval of the
21 Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it
22 becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties
23 shall be restored to their respective positions in the Action prior to entry of this Settlement. If
24 this Settlement Agreement is voided, not approved by the Court, or approval is reversed on
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1 appeal, it shall have no force or effect and no Party shall be bound by its terms except to the
2 extent: (a) the Court reserves any authority to issue any appropriate orders when denying
3 approval; and/or (b) there are any terms and conditions in this Settlement Agreement specifically
4 stated to survive the Settlement Agreement being voided or not approved, and which control in
5 such an event.

6 **17. INCREASE IN WORKWEEKS**

7 Defendants represent that there are no more than 18,499 Workweeks worked during the
8 Class Period. In the event the number of Workweeks worked increases by more than 5%, or 925
9 Workweeks during the Class Period, then the Class Period and PAGA Period shall end on the
10 date the number of Workweeks reaches 19,424 Workweeks. The Gross Settlement Amount shall
11 not be reduced as a result of the total Workweeks falling below Defendants' estimate of 18,499
12 Workweeks.

13 **18. NOTICE OF JUDGMENT**

14 In addition to any duties set out herein, the Settlement Administrator shall provide notice
15 of the Final Judgment entered in the Action by posting the same on its website for a period of no
16 less than one (1) year after the Final Judgment is entered.

17 **19. MISCELLANEOUS PROVISIONS**

18 **A. Interpretation of the Agreement.**

19 This Agreement constitutes the entire agreement between the Parties with respect to its
20 subject matter. Except as expressly provided herein, this Agreement has not been executed in
21 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
22 written representations or terms shall modify, vary or contradict its terms. In entering into this
23 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
24 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
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1 enforced under the laws of the State of California, both in its procedural and substantive aspects,
2 without regard to its conflict of law provisions. Any claim arising out of or relating to the
3 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
4 Court of the State of California for the County of Orange, and Plaintiff and Defendants hereby
5 consent to the personal jurisdiction of the Court in the Action over it solely in connection
6 therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties,
7 and each of them, participated in the negotiation and drafting of this Agreement and had available
8 to them the advice and assistance of independent counsel. As such, neither Plaintiff nor
9 Defendants may claim that any ambiguity in this Agreement should be construed against the
10 other. The Agreement may be modified only by a writing signed by counsel for the Parties and
11 approved by the Court.

12 **B. Further Cooperation.**

13 The Parties and their respective attorneys shall proceed diligently to prepare and execute
14 all documents, to seek the necessary approvals from the Court, and to do all things reasonably
15 necessary to consummate the Settlement as expeditiously as possible. The Parties agree that they
16 will not take any action inconsistent with this Agreement, including, without limitation,
17 encouraging Class Members to opt out of the Settlement.

18 **C. Counterparts.**

19 The Agreement may be executed in one or more actual or non-original counterparts, all
20 of which will be considered one and the same instrument and all of which will be considered
21 duplicate originals.

22 **D. Authority.**

23 Each individual signing below warrants that he or she has the authority to execute this
24 Agreement on behalf of the Party for whom or which that individual signs.

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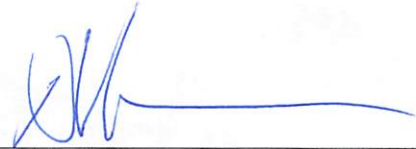
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Dated: October 19, 2023


ALL COUNTY ENVIRONMENTAL &
RESTORATION, INC.
Defendant

By: Donald Moser

Its: _____

Dated: October 19, 2022


DONALD MOSER
Defendant

By: Donald Moser

Its: _____

AGREED AS TO FORM:

Dated: _____, 2023

DAVID D. BIBIYAN
VEDANG J. PATEL
Co-Counsel for Plaintiff DONALDO MUNOZ
GARCIA

Dated: _____, 2023

MICHAEL NOURMAND
JAMES A. DE SARIO
Co-Counsel for Plaintiff DONALDO
MUNOZ GARCIA

Dated: October 19, 2023


HANNAH SWEISS
Counsel for Defendants ALL COUNTY
ENVIRONMENTAL & RESTORATION,
INC.; and DONALD MOSER

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Dated: _____, 2023

ALL COUNTY ENVIRONMENTAL &
RESTORATION, INC.
Defendant

By: _____

Its: _____

Dated: _____, 2022

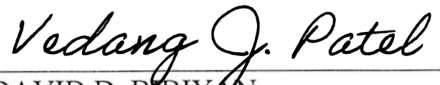
DONALD MOSER
Defendant

By: _____

Its: _____

AGREED AS TO FORM:

Dated: October 19, 2023



DAVID D. BIBYAN
VEDANG J. PATEL
Co-Counsel for Plaintiff DONALDO MUNOZ
GARCIA

Dated: 10/11, 2023



MICHAEL NOURMAND
JAMES A. DE SARIO
Co-Counsel for Plaintiff DONALDO
MUNOZ GARCIA

Dated: _____, 2023

HANNAH SWEISS
Counsel for Defendants ALL COUNTY
ENVIRONMENTAL & RESTORATION,
INC.; and DONALD MOSER