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[Additional Counsel on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

ALEJANDRO GONZALEZ AVALOS, an individual, on behalf of himself and others similarly situated, and as a private attorney general on behalf of the State of California,

PLAINTIFF,

v.

XL LANDSCAPE DEVELOPMENT, a California Corporation; XL LANDSCAPE DEVELOPMENT, LLC, a Nevada Corporation; and DOES 1 thru 50, inclusive,

DEFENDANTS.

Case No. 34-2022-00315272

[Assigned For All Purposes to the Hon. Lauri A. Damrell, Dept. 28]

AMENDMENT TO JOINT STIPULATION OF CLASS ACTION SETTLEMENT

Date Filed: February 9, 2022

FAC Filed: April 8, 2022

JORGE GONZALEZ AVALOS, an individual, on behalf of himself and others similarly situated, and as a private attorney general on behalf of the State of California,

PLAINTIFF,

v.

XL LANDSCAPE DEVELOPMENT, a California Corporation, XL LANDSCAPE DEVELOPMENT, a Nevada Limited Liability Company, XL CONCRETE MASONRY, LLC, a Nevada Limited Liability Company, BLACK IRON REINFORCING, LLC, a Nevada Limited Liability Company, PREMIER ONE ELECTRIC, LLC, a Nevada Limited Liability Company, XL COMPANIES LLC, a Nevada Limited Liability, Company and DOES 1 thru 50, inclusive,

DEFENDANTS.

FISHER & PHILLIPS LLP

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Attorneys for Defendants

XL LANDSCAPE DEVELOPMENT,

XL LANDSCAPE DEVELOPMENT, LLC,

XL CONCRETE MASONRY, LLC,

BLACK IRON REINFORCING, LLC, and

XL COMPANIES LLC

1 This Amendment to the Joint Stipulation of Class and Representative Action Settlement is made
2 and entered into between Plaintiffs Alejandro Gonzalez Avalos and Jorge Gonzalez Avalos (collectively
3 “Plaintiffs”) on behalf of themselves and others similarly situated and as representatives of the Settlement
4 Class and as a Private Attorney General on behalf of the State of California under PAGA (as defined
5 below) and Defendants XL Landscape Development, XL Landscape Development, LLC, XL Concrete
6 Masonry, LLC, Black Iron Reinforcing, LLC, Premier One Electric, LLC, and XL Companies, LLC
7 (collectively “XL” or “Defendants”). (Plaintiffs and Defendants hereinafter are collectively referred to
8 as the “Parties”).

9 WHEREAS, on June 16, 2023, the Court issued a tentative ruling instructing the Parties to address
10 certain issues within the original Joint Stipulation of Class Action Settlement (the “Settlement”) and
11 moving papers for Preliminary Approval of the Joint Stipulation of Class Action Settlement;

12 WHEREAS, the Parties did not contest the tentative ruling and have agreed to address the Court’s
13 concerns and issues;

14 WHEREAS, the Parties now seek to amend the original Settlement as follows:

- 15 1. Revised Paragraph I (T) shall be amended to read: **Gross Settlement Amount.** “Gross
16 Settlement Amount” or “GSA” is the agreed upon non-reversionary settlement amount
17 totaling \$400,000.00, which represents the non-reversionary amount payable in this
18 Settlement by Defendants XL Landscape Development, XL Landscape Development,
19 LLC, XL Concrete Masonry, LLC, Black Iron Reinforcing, LLC, Premier One Electric,
20 LLC, and XL Companies, LLC and includes attorneys’ fees and costs, costs of settlement
21 administration by the Settlement Administrator, the Service Payment to the Class
22 Representatives of up to \$7,500.00 each (\$15,000 total), payment in the total amount of
23 \$20,000.00 for Private Attorneys General Act (“PAGA”) penalties 75% or \$15,000.00 of
24 which will be paid to the Labor & Workforce Development Agency (“LWDA”), and 25%
25 or \$5,000.00 will be included in the amount allocated to the Aggrieved Employees in the
26 Net Settlement Amount, and the amounts payable to the Aggrieved Employees.
- 27 2. Revised Paragraph I (W) shall be amended to read: **Net Settlement Amount.** “Net
28 Settlement Amount” shall mean the Gross Settlement Amount minus Settlement
Administration Expenses, Class Attorney Fees and Expenses, and all PAGA Penalties.

3. Revised Paragraph I (CC) shall be amended to read: **PAGA Payment.** “PAGA Payment” or “PAGA Penalties” shall mean the penalties pursuant to California Labor Code sections 2698, et seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”), that the Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is \$20,000.00 for Private Attorneys General Act (“PAGA”) penalties 75% or \$15,000.00 of which will be paid to the Labor & Workforce Development Agency (“LWDA”), and 25% or \$5,000.00 will be included in the amount allocated to the Settlement Class. Class Counsel shall give timely notice of the Class Settlement to the LWDA under Labor Code section 2699(1)(2). Since PAGA does not permit employees to opt-out, any Class Member who opts out shall still receive their pro-rata share of the PAGA penalties. *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1122 (9th Cir. 2014) (explaining that PAGA “has no notice requirement for unnamed aggrieved employees, nor may such employees opt out of a PAGA action.”); *accord Arias v. Sup. Ct.* 46 Cal.4th 969, 986-987 (2009); *Williams v. Sup. Ct.*, 3 Cal.5th 531, 547, fn. 4 (2017) (explaining that aggrieved employees “do not own a personal claim for PAGA civil penalties...and whatever personal claims the absent employees might have for relief are not at stake”).
4. Paragraph I (LL) shall be *added* to read: PAGA Individual Settlement Amount. “PAGA Individual Settlement Amount” shall mean the \$5,000.00 in PAGA Penalties which is ultimately distributed to each Aggrieved Employee.
5. Revised Paragraph IV (A) shall be amended to read: **Settlement Amount.** The Parties agree to settle this Action for the Gross Settlement Amount of \$ 400,000.00. There shall be no reversion to Defendants or Releasees. The Gross Settlement Amount and other actions and forbearances taken by Defendants and Releasees shall constitute adequate consideration for the Class Settlement and will be made in full and final settlement of: (a) the Released Claims, (b) Class Attorneys’ Fees and Expenses, (c) Settlement Administrative Expenses, (d) the Service Awards, (e) PAGA Payment to the LWDA and Aggrieved Employees, and (f) any other obligation of Defendants and Releasees under this Stipulation. After the Court issues an order preliminarily approving this Class

Settlement, the Settlement Administrator will distribute the Class Notice to the Settlement Class Members, which shall describe the terms of the Class Settlement and procedures to opt out, object or participate in the Class Settlement.

6. Revised Paragraph IV (D) shall be amended to read: **Payment to Aggrieved Employees.**

The portion of the PAGA penalty payment allocated to the Aggrieved Employees, who are Class Members that, worked during the PAGA Covered Period (February 2, 2021 and February 10, 2023) regardless of if they opt-out of the Settlement, shall be distributed to the Aggrieved Employees who worked during the PAGA Covered Period regardless of whether or not they opt out of the Settlement.

7. Revised Paragraph IV (E) shall be amended to read: **Tax Treatment and Payment.** For

calculating Employee's Taxes and Required Withholding for the Individual Settlement Amounts for Class Participants (including any payments to the Class Representatives but exclusive of their Service Awards), 10% of each Individual Settlement Amount paid to each Class Member shall constitute wages and reported on an IRS W-2 form on that basis and 90% shall be considered non-wage premiums, penalties and interest, to be reported on an IRS form 1099. 100% of the Aggrieved Employees' portion of PAGA penalties will be treated as PAGA penalties and reported on an IRS Form 1099. Prior to final distribution, the Settlement Administrator shall calculate the total Employee's Taxes and Required Withholding due as a result of the wage portion of Class Participants' anticipated Individual Settlement Amounts and such actual amount will be deducted from the Net Settlement Amount. Additionally, prior to the final funding of the Gross Settlement Amount and final distribution, the Settlement Administrator shall calculate the total Employers' Taxes due on the wage portion of the Class Participants' Individual Settlement Amounts and issue instructions to Defendants and Releasees who shall pay the employer's share of payroll taxes. The Parties understand that Plaintiffs and the Class Participants who receive any payment pursuant to this Stipulation shall be solely responsible for any and all other individual tax obligations associated with this Class Settlement.

8. Revised Paragraph VII (A)(e) shall be amended to read: The Net Settlement Amount,

when excluding the Aggrieved Employees Share of PAGA penalties is estimated to be \$181,666.67.

9. Revised Paragraph VII (G) shall be amended to read: **Time for Payment of Taxes and Required Withholding for Individual Settlement Amounts.** The Settlement Administrator shall make every effort to pay the Employee's Taxes and Required Withholding associated with each Class Participant's Individual Settlement Amount and mail the Individual Settlement Amount to each Settlement Class Member by first-class U.S. mail, to the last-known address within fifteen (15) calendar days after the Defendants and/or Releasees deposit the final installment payment of the Gross Settlement Amount with the Settlement Administrator. If the Settlement Administrator is not able to do so within the time period set forth above, it shall so inform Class Counsel and Defense Counsel and provide an approximate date by which the Employee's Taxes and Required Withholding shall be paid and the Individual Settlement Amounts will be mailed. Under no circumstances shall the Settlement Administrator distribute checks to Class Members until all Individual Settlement Amounts have been considered, calculated, and accounted for, and the all of the remaining monetary obligations have been calculated and accounted for. Within two-hundred (200) days of mailing each Class Participant's Individual Settlement Amount, the Settlement Administrator shall provide to Class Counsel a declaration of payment to file with the Court. In the event that any Class Member is deceased, payment shall be made payable to the estate of that Settlement Class Member and delivered to the executor or administrator of that estate, unless the Settlement Administrator has received an affidavit or declaration pursuant to Cal. Probate Code § 13101, in which case payment shall be made to the affiant(s) or declarant(s).
10. Revised Paragraph X (B) shall be amended to read: **PAGA Release of Claims for the State of California.** Upon the Effective Date, the State of California and the Aggrieved Employees will be deemed to have released the PAGA Released Claims for alleged Labor Code violations committed against the Aggrieved Employees during the PAGA Period.

WHEREAS, these are the only changes the Parties intend to make to the Settlement and agree that all other terms shall remain in full force and effect.

WHEREAS, this Amendment affects the terms of the Settlement as set forth in the Notice of Class Action Settlement. As such, a redlined Notice of Proposed Class Action Settlement reflecting this change is attached hereto as Exhibit A.

07 / 13 / 2023
Dated: July __, 2023



Alejandro Gonzalez Avalos as the Class and PAGA Representative

Dated: July __, 2023

Jorge Gonzalez Avalos as the Class and PAGA Representative

Dated: July __, 2023

On behalf of XL Landscape Development, XL Landscape Development, LLC, XL Concrete Masonry, LLC, Black Iron Reinforcing, LLC, Premier One Electric, LLC, and XL Companies, LLC
By: _____
Its : _____

APPROVED AS TO FORM:

Dated: July __, 2023

WINSTON LAW GROUP, P.C.

By: _____
DAVID S. WINSTON
Attorneys for Plaintiffs, the Proposed Settlement Class, and the Aggrieved Employees

Dated: July __, 2023

FISHER & PHILLIPS LLP

By: _____
ALDEN J. PARKER
GREGORY L. BLUEFORD
Attorneys for Defendants XL Landscape Development, XL Landscape Development, LLC, XL Concrete Masonry, LLC, Black Iron Reinforcing, LLC, Premier One Electric, LLC, and XL Companies, LLC

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Dated: July ___, 2023

Alejandro Gonzalez Avalos as the Class and PAGA Representative


Jorge Gonzalez Avalos as the Class and PAGA Representative

Dated: July ___, 2023

On behalf of XL Landscape Development, XL Landscape Development, LLC, XL Concrete Masonry, LLC, Black Iron Reinforcing, LLC, Premier One Electric, LLC, and XL Companies, LLC

By: _____
Its : _____

APPROVED AS TO FORM:

Dated: July ___, 2023

WINSTON LAW GROUP, P.C.

By: DAVID S. WINSTON
Attorneys for Plaintiffs, the Proposed Settlement Class, and the Aggrieved Employees

Dated: July ___, 2023

FISHER & PHILLIPS LLP

By: ALDEN J. PARKER
GREGORY L. BLUEFORD
Attorneys for Defendants XL Landscape Development, XL Landscape Development, LLC, XL Concrete Masonry, LLC, Black Iron Reinforcing, LLC, Premier One Electric, LLC, and XL Companies, LLC

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Dated: July __, 2023

Alejandro Gonzalez Avalos as the Class and PAGA Representative

Dated: July __, 2023

Jorge Gonzalez Avalos as the Class and PAGA Representative

Dated: 7/14/2023

DocuSigned by:

Russell Bay

On behalf of XL Landscape Development, XL Landscape Development, LLC, XL Concrete Masonry, LLC, Black Iron Reinforcing, LLC, Premier One Electric, LLC, and XL Companies, LLC
By: Russell Bay
Its: President

APPROVED AS TO FORM:

Dated: July __, 2023

WINSTON LAW GROUP, P.C.

By: DAVID S. WINSTON
Attorneys for Plaintiffs, the Proposed Settlement Class, and the Aggrieved Employees

Dated: July 14, 2023

FISHER & PHILLIPS LLP

By: 
ALDEN J. PARKER
GREGORY L. BLUEFORD
Attorneys for Defendants XL Landscape Development, XL Landscape Development, LLC, XL Concrete Masonry, LLC, Black Iron Reinforcing, LLC, Premier One Electric, LLC, and XL Companies, LLC

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Dated: July ___, 2023

Alejandro Gonzalez Avalos as the Class and PAGA Representative

Dated: July ___, 2023

Jorge Gonzalez Avalos as the Class and PAGA Representative

Dated: July ___, 2023

On behalf of XL Landscape Development, XL Landscape Development, LLC, XL Concrete Masonry, LLC, Black Iron Reinforcing, LLC, Premier One Electric, LLC, and XL Companies, LLC

By: _____
Its : _____

APPROVED AS TO FORM:

07 / 13 / 2023

Dated: July ___, 2023

WINSTON LAW GROUP, P.C.

David Winston

By: DAVID S. WINSTON
Attorneys for Plaintiffs, the Proposed Settlement Class, and the Aggrieved Employees

Dated: July ___, 2023

FISHER & PHILLIPS LLP

By: ALDEN J. PARKER
GREGORY L. BLUEFORD
Attorneys for Defendants XL Landscape Development, XL Landscape Development, LLC, XL Concrete Masonry, LLC, Black Iron Reinforcing, LLC, Premier One Electric, LLC, and XL Companies, LLC