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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]

**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

This Joint Stipulation of Class and Representative Action Settlement is made and entered into between Plaintiffs Alejandro Gonzalez Avalos and Jorge Gonzalez Avalos (collectively “Plaintiffs”) on behalf of themselves and others similarly situated and as representatives of the Settlement Class and as a Private Attorney General on behalf of the State of California under PAGA (as defined below) and Defendants XL Landscape Development, XL Landscape Development, LLC, XL Concrete Masonry, LLC, Black Iron Reinforcing, LLC, Premier One Electric, LLC, and XL Companies, LLC (collectively “XL” or “Defendants”). (Plaintiffs and Defendants hereinafter are collectively referred to as the “Parties”). This is a non-reversionary checks-mailed settlement and Defendants (as defined below) shall pay 100% of the Gross Settlement Amount (as defined below). This Stipulation is subject to the approval of the Court, pursuant to California Rules of Court, Rule 3.769(c), (d) and (e), and is made for the sole purpose of attempting to consummate settlement of the Action on a class-wide basis subject to the following terms and conditions. As detailed below, in the event the Court does not enter an order granting final approval of the Class Settlement, as defined below, or the conditions precedent are not met for any reason, this Stipulation is void and of no force or effect whatsoever.

**I. DEFINITIONS**

As used in this Stipulation, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Stipulation are not specifically defined below, but are defined elsewhere in this Stipulation, they are incorporated by reference into this definition section.

**A. Action or Actions.** “Action” or “Actions” shall mean the above captioned action titled *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*, Sacramento County Superior Court, Case No. 34-2022-00315272 and the consolidated case of *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, LLC, a Nevada Corporation, and DOES 1 thru 50, inclusive, DEFENDANTS*, Sacramento County Superior Court, Case No. 34-2022-00315272 (formerly Case No.

34-2022-00319236).

**B. Administrative Expenses.** “Administrative Expenses” shall include all costs and expenses associated with and paid to the third-party Settlement Administrator, which are anticipated not to exceed \$20,000.00.

**C. Aggrieved Employee.** “Aggrieved Employee” shall mean all non-exempt hourly employees who are employed or have been employed by Defendants in the State of California between February 2, 2021 and February 10, 2023. There are approximately 520 Aggrieved Employees.

**D. Class Attorney Fees and Expenses.** “Class Attorney Fees and Expenses” shall mean Class Counsel’s attorney fees and expenses as set forth in Section IV.G.

**E. Class Counsel.** “Class Counsel” shall mean David S. Winston of Winston Law Group, P.C.

**F. Class, Settlement Class, Class Member or Settlement Class Member.** “Class,” “Settlement Class,” “Class Member,” or “Settlement Class Member” shall mean all non-exempt hourly employees who are employed or have been employed by Defendants in the State of California between August 15, 2017 and February 10, 2023. There are approximately 568 Class Members.

**G. Class Notice.** “Class Notice” shall mean the Notice of Proposed Class Action Settlement and Hearing Date for Court Approval approved by the Court, which is to be mailed to Class Members in English with a Spanish translation in the form, agreed to by the Parties and incorporated by reference into this Agreement.

**H. Class Participants.** “Class Participants” shall mean any and all Class Members who do not timely Opt-Out of the Class Settlement.

**I. Class Period or Covered Period.** “Class Period” or “Covered Period” shall mean the period from August 15, 2017 and February 10, 2023.

**J. Class Representatives.** “Class Representatives” shall mean Plaintiffs shall mean Alejandro Gonzalez Avalos and Jorge Gonzalez Avalos.

**K. Class Settlement.** “Class Settlement” shall mean the settlement embodied in this Stipulation, which is subject to Court approval.

**L. Court.** “Court” shall mean the Sacramento County Superior Court.

1           **M.     Defendants, Releasees, or Released Parties.** “Defendants,” “Releasees,” or “Released  
2 Parties” shall mean and refer to XL Landscape Development, XL Landscape Development, LLC, XL  
3 Concrete Masonry, LLC, Black Iron Reinforcing, LLC, Premier One Electric, LLC, and XL Companies,  
4 LLC and each of their respective current and former owners, officers, directors, shareholders, executives,  
5 and employees.

6           **N.     Defense Counsel.** “Defense Counsel,” Defendants’ Counsel” or “Releasees’ Counsel”  
7 shall mean Alden J. Parker and Gregory L. Blueford of Fisher & Phillips LLP.

8           **O.     Effective Date.** “Effective Date” shall mean the first business day following the last of  
9 the following occurrences: (i) if no Class Member timely and properly intervenes, files a timely motion  
10 to vacate the Judgment under, or objects to the Settlement, then the date the Court enters an order granting  
11 Final Approval of the Settlement; (ii) if a Class Member timely intervenes or files a timely motion to  
12 vacate the judgment or objects to the Settlement, then sixty-one (61) days following the date the Court  
13 enters an order granting final approval, assuming no appeal is filed; or (iii) if a Class Member timely  
14 intervenes or files a motion to vacate the Judgment, or objects to the Settlement, and files a timely appeal,  
15 then the date of final resolution of that appeal (including any requests for rehearing and/or petitions for  
16 certiorari), resulting in final and complete judicial approval of the Settlement in its entirety, with no  
17 further challenge to the Settlement being possible.

18           **P.     Employee’s Taxes and Required Withholding.** “Employee’s Taxes and Required  
19 Withholding” shall mean the employee’s share of any and all applicable federal, state or local payroll  
20 taxes, including those collected under authority of the Federal Insurance Contributions Act (“FICA”),  
21 FUTA and/or SUTA on the portion of any Class Participant’s Individual Settlement Amount, as defined  
22 below, that constitutes wages. The Employee’s Taxes and Required Withholdings will be withheld from  
23 and paid out of the Net Settlement Amount.

24           **Q.     Employer’s Taxes.** “Employer’s Taxes” shall mean and refer to Defendants’ share of  
25 payroll taxes (*e.g.*, UI, ETT, Social Security and Medicare taxes) that is owed on the portion of any Class  
26 Participant’s Individual Settlement Amount that constitutes wages. The Employer’s Taxes shall be paid  
27 separately to the Settlement Administrator by Defendants and Releasees in addition to the Gross  
28 Settlement Amount and shall **not** be paid from the Gross Settlement Amount or Net Settlement Amount.

1           **R.     Final Approval and Fairness Hearing.** “Final Approval and Fairness Hearing” shall  
2 mean the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Class  
3 Settlement.

4           **S.     Funding Date.** “Funding Date” or the date that Defendants will deposit the Gross  
5 Settlement Amount shall mean the following: (i) in the event that no objections are filed and no appeal  
6 is filed sixty-five (65) calendar days after final approval is granted; or (ii) in the event an objection is  
7 filed the funding will be due thirty (30) calendar days after the deadline to appeal has expired provided  
8 that the objector has either filed a motion to intervene and/or a motion to vacate the judgment and appeals  
9 both the judgment and either the motion to intervene or motion to vacate judgment. In the event an appeal  
10 is filed the funds are due within thirty (30) calendar days of the resolution of the appeal presuming that  
11 the court of appeal upholds the settlement.

12           **T.     Gross Settlement Amount.** “Gross Settlement Amount” or “GSA” is the agreed upon  
13 non-reversionary settlement amount totaling \$400,000.00, which represents the non-reversionary amount  
14 payable in this Settlement by Defendants XL Landscape Development, XL Landscape Development,  
15 LLC, XL Concrete Masonry, LLC, Black Iron Reinforcing, LLC, Premier One Electric, LLC, and XL  
16 Companies, LLC and includes attorneys’ fees and costs, costs of settlement administration by the  
17 Settlement Administrator, the Service Payment to the Class Representatives of up to \$7,500.00 each  
18 (\$15,000 total), payment in the total amount of \$20,000.00 for Private Attorneys General Act (“PAGA”)  
19 penalties 75% or \$15,000.00 of which will be paid to the Labor & Workforce Development Agency  
20 (“LWDA”), and 25% or \$5,000.00 will be included in the amount allocated to the Aggrieved Employees  
21 in the Net Settlement Amount, and the amounts payable to the Settlement Class.

22           **U.     Hearing on Preliminary Approval.** “Hearing on Preliminary Approval” shall mean the  
23 hearing held on the motion for preliminary approval of the Class Settlement.

24           **V.     Individual Settlement Amount.** “Individual Settlement Amount” shall mean the amount  
25 which is ultimately distributed to each Class Participant.

26           **W.     Net Settlement Amount.** “Net Settlement Amount” shall mean the Gross Settlement  
27 Amount minus Settlement Administration Expenses, Class Attorney Fees and Expenses, 75% of the  
28 PAGA Payment payable to the California Labor and Workforce Development Agency (“LWDA”), and

1 the Service Awards.

2 **X. Opt-Out(s).** “Opt-Out(s)” shall mean any and all persons who timely and validly request  
3 exclusion from the Class Settlement in accordance with the terms of the Class Notice and no later than  
4 the Response Deadline.

5 **Y. Plaintiffs.** “Plaintiffs” shall mean the named Plaintiffs Alejandro Gonzalez Avalos and  
6 Jorge Gonzalez Avalos.

7 **Z. PAGA Period or PAGA Covered Period.** “PAGA Period” or “PAGA Covered Period”  
8 shall mean the period from February 2, 2021 and February 10, 2023.

9 **AA. PAGA Released Claims.** “PAGA Released Claims” shall mean any claim for PAGA  
10 penalties under Labor Code section 2699 that were alleged or could reasonably have been alleged based  
11 on the facts stated in the February 2, 2022 PAGA Notice, the April 29, 2022 PAGA Notice, the April 8,  
12 2022 First Amended Complaint in *Alejandro Gonzalez Avalos vs. XL Landscape Development et al.*, the  
13 April 29, 2022 Complaint in *Jorge Gonzalez Avalos vs. XL Landscape Development et al.* including  
14 claims for violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 512, 558, 1198,  
15 2802, 6400, 6401, 6401.7, 6402, 6403, 6404 as well as IWC Wage Order Nos. 5-2001 and 16-2001.

16 **BB. PAGA Representatives.** “PAGA Representatives” shall mean Plaintiffs Alejandro  
17 Gonzalez Avalos and Jorge Gonzalez Avalos.

18 **CC. PAGA Payment.** “PAGA Payment” means the penalties pursuant to California Labor  
19 Code sections 2698, et seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”), that the  
20 Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the  
21 Action, which is \$20,000.00 for Private Attorneys General Act (“PAGA”) penalties 75% or \$15,000.00  
22 of which will be paid to the Labor & Workforce Development Agency (“LWDA”), and 25% or \$5,000.00  
23 will be included in the amount allocated to the Settlement Class. Class Counsel shall give timely notice  
24 of the Class Settlement to the LWDA under Labor Code section 2699(l)(2). Since PAGA does not permit  
25 employees to opt-out, any Class Member who opts out shall still receive their pro-rata share of the PAGA  
26 penalties. *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1122 (9th Cir. 2014) (explaining that  
27 PAGA “has no notice requirement for unnamed aggrieved employees, nor may such employees opt out  
28 of a PAGA action.”); *accord Arias v. Sup. Ct.* 46 Cal.4th 969, 986-987 (2009); *Williams v. Sup. Ct.*, 3

1 Cal.5th 531, 547, fn. 4 (2017) (explaining that aggrieved employees “do not own a personal claim for  
2 PAGA civil penalties...and whatever personal claims the absent employees might have for relief are not  
3 at stake”).

4 **DD. Parties.** “Parties” shall mean Plaintiffs and Defendants.

5 **EE. Preliminary Approval Date.** “Preliminary Approval Date” shall mean the date upon  
6 which the Court enters an order preliminarily approving this Stipulation.

7 **FF. Released Claims.** “Claims,” “Released Claims,” or “Class Released Claims” shall mean  
8 any and all causes of action or claims that were asserted or could reasonably have been asserted based  
9 upon the facts alleged in the February 9, 2022 Complaint in *Alejandro Gonzalez Avalos vs. XL*  
10 *Landscape Development et al.*, the April 8, 2022 First Amended Complaint in *Alejandro Gonzalez Avalos*  
11 *vs. XL Landscape Development et al.*, the April 29, 2022 Complaint in *Jorge Gonzalez Avalos vs. XL*  
12 *Landscape Development et al.* including: 1) failure to provide lawful meal periods and pay meal period  
13 premiums; 2) failure to provide lawful rest/recovery periods and pay rest period premiums; 3) violations  
14 of California Labor Code § 226(e); 4) waiting time penalties; 5) failure to reimburse business expenses;  
15 6) violation of California Business & Professions Code §§ 17200, *et seq.*; 7) claims under the Fair Credit  
16 Reporting Act. The Released claims do not include any claims for workers compensation, unemployment,  
17 or disability benefits or any other claims other than those specified herein.

18 **GG. Response Deadline.** “Response Deadline” shall mean the date forty-five (45) following  
19 the date on which the Settlement Administrator first mails Class Notice to the Settlement Class Members.

20 **HH. Service Awards.** “Service Award” or “Service Awards” shall mean the amount approved  
21 by the Court, not to exceed \$15,000.00 total (\$7,500 each) to be paid to the Class Representatives and/or  
22 PAGA Representatives in recognition of their time and efforts on behalf of the Class and as consideration  
23 for a full, general, and comprehensive release and Civil Code section 1542 waiver of the Class  
24 Representative’s Released Claims.

25 **II. Settlement.** “Settlement” shall mean the settlement between the Parties, which is  
26 memorialized in this Stipulation and subject to approval by the Court.

27 **JJ. Settlement Administrator.** “Settlement Administrator” shall mean ILYM Group, Inc.  
28 (or another administrator to be agreed by the parties) who will be responsible for administration of the

1 Settlement and related matters.

2 **KK. Stipulation.** “Stipulation” shall mean this Joint Stipulation of Settlement and Release of  
3 Class and Representative Action.

4 **II. FACTUAL AND PROCEDURAL BACKGROUND OF ACTION**

5 **A. Plaintiffs’ Claims.** Plaintiffs alleged that Defendants violated Labor Code §§ 201, 202,  
6 203, 204, 210, 226, 226.3, 226.7, 512, 558, 1198, 2802, 6400, 6401, 6401.7, 6402, 6403, 6404 as well as  
7 IWC Wage Order Nos. 5-2001 and 16-2001 as well as the Fair Credit Reporting Act. Specifically,  
8 Plaintiffs alleged that Defendants: 1) failed to provide lawful meal periods and pay meal period  
9 premiums; 2) failed to provide lawful rest/recovery periods and pay rest period premiums; 3) violated  
10 California Labor Code § 226(e); 4) failed to timely pay wages and/or pay waiting time penalties pursuant  
11 to Labor Code § 203; 5) failed to reimburse business expenses; 6) violated California Business &  
12 Professions Code §§ 17200, *et seq.*; 7) violated the Fair Credit Reporting Act and 8) seeks PAGA  
13 penalties for these alleged violations and for additional violations as set forth in the February 2, 2022  
14 PAGA Notice, the April 29, 2022 PAGA Notice, the April 8, 2022 First Amended Complaint in  
15 *Alejandro Gonzalez Avalos vs. XL Landscape Development et al.*, the April 29, 2022 Complaint in *Jorge*  
16 *Gonzalez Avalos vs. XL Landscape Development et al.*

17 The Parties mediated the matter with well-respected mediator Francis J. (“Tripper”) Ortman III of  
18 Ortman Mediation as a result of a mediator’s proposal. At all times, the Parties’ settlement negotiations  
19 have been non-collusive, adversarial, and at arm’s length.

20 **B. Discovery, Investigation, and Research.** In advance of the Mediation and the  
21 submission of the Preliminary Approval Papers, Class Counsel conducted a detailed investigation of the  
22 Settlement Class’ putative claims. This discovery and investigation among other things, information  
23 about: (a) the number of Class Members (568), (b) the number of Aggrieved Employees (520); (d) the  
24 number of pay periods/workweeks at issue during the Class Period (13,493); (e) the number of pay  
25 periods at issue during the PAGA period (12,925 pay periods); (e) the number of former employees (67);  
26 (f) information about Defendants’ meal and rest period policies; (g) relevant policy documents including  
27 Defendants’ Employee Handbook and other relevant policy documents; (h) a randomized sample of time  
28 and pay records for 112 workweeks for each entity; and (i) the depositions of both named Plaintiffs.

1 The Parties agree that the above-described investigation and evaluation, as well as discovery and  
2 the information exchanged during the settlement negotiations, are more than sufficient to assess the  
3 merits of the Parties' respective positions and to compromise the issues on a fair and equitable basis. The  
4 Parties have engaged in sufficient investigation and discovery to assess the relative merits of the claims  
5 of the Class Representatives and PAGA Representatives and of Defendants' defenses to them.

6 **C. Benefits of Class Settlement.** The extensive informal discovery conducted in this matter  
7 have been adequate to give the Class Representatives and Class Counsel a sound understanding of the  
8 merits of their positions and to evaluate the worth of the claims of the Settlement Class. The informal  
9 discovery conducted in this Action and the information exchanged by the Parties through discovery and  
10 settlement discussions are sufficient to reliably assess the merits of the Parties' respective positions and  
11 to compromise the issues on a fair and equitable basis.

12 Plaintiffs and Class Counsel believe that the claims, causes of action, allegations and contentions  
13 asserted in the Action have merit. Class Counsel has diligently pursued an investigation of Plaintiffs' and  
14 the Class' claims against Defendants and Releasees. Based on their own independent investigation and  
15 evaluation, Class Counsel is of the opinion that settlement with Defendants and Releasees for the  
16 consideration and on the terms set forth in this Settlement is fair, reasonable, and adequate, and is in the  
17 best interest of the Settlement Class in light of all known facts and circumstances and the various factual  
18 and legal defenses asserted by Defendants.

19 Plaintiffs and Class Counsel also recognize and acknowledge the expense and delay of continued  
20 lengthy proceedings necessary to prosecute the Action against Defendants through trial and through  
21 appeals. Class Counsel has taken into account the uncertain outcome of the litigation, the risk of  
22 continued litigation in complex actions such as this, as well as the difficulties and delays inherent in such  
23 litigation. Plaintiffs are mindful of the potential challenges and possible defenses to the claims alleged in  
24 the Action.

25 Plaintiffs and Class Counsel believe that the Settlement set forth in this Stipulation confers  
26 substantial benefits upon Plaintiffs and the Settlement Class Members and that an independent review of  
27 this Stipulation by the Court in the approval process will confirm this conclusion. Based on their own  
28 independent investigation and evaluation, Class Counsel has determined that the Settlement set forth in

the Stipulation is in the best interests of Plaintiffs and the Settlement Class Members.

**D. Defendants' Denials of Wrongdoing and Liability.** Defendants have denied and continue to deny each and all of the allegations, claims, and contentions alleged by Plaintiffs in the Action. Defendants have expressly denied and continue to deny all charges of intentional or knowing wrongdoing or liability against it arising out of any of the conduct, statements, acts, or omissions alleged in the Action. Defendants contend that there is a good faith dispute as to whether it intentionally or knowingly failed to comply in good faith with California's Labor Code, that no Class Member or Aggrieved Employee was injured, and it has dealt legally and fairly with Plaintiffs and Settlement Class Members. Defendants further deny that, for any purpose other than settling this Action, these claims are appropriate for class or representative treatment. Nonetheless, Defendants have concluded that further proceedings in the Action would be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation in order to dispose of burdensome and protracted litigation, to permit the operation of Defendants' business without further expensive litigation and the distraction and diversion of its personnel with respect to matters at issue in the Action. Defendants have also taken into account the uncertainty and risks inherent in any litigation, especially in complex cases such as the Action. Defendants have, therefore, determined that it is desirable and beneficial to it that the Action be settled in the manner and upon the terms and conditions set forth in this Stipulation.

**E. Intent of the Class Settlement.** The Class Settlement set forth herein intends to achieve the following: (1) entry of an order approving the Class Settlement; (2) entry of judgment of the Action; (3) discharge of Defendants and Released Parties from liability for any and all of the Released Claims and any and all claims arising out of the Action.

### **III. CONDITIONAL CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL**

**A. The Settlement Class.** For the purposes of this Stipulation and the Class Settlement of this Action only, the Parties stipulate to conditional class certification of the Settlement Class. Defendants' Counsel believe this conditional certification is appropriate because the Released Claims are being compromised without need to establish the elements of those claims on which liability turns.

1       **B.     Appointment of Class Counsel.** For purposes of this Stipulation and subject to the  
2 Court's approval, the Parties hereby stipulate to the appointment of Class Counsel as counsel for the  
3 Class and the effectuation of the Class Settlement pursuant to this Stipulation.

4 **IV.     CLASS SETTLEMENT CONSIDERATION**

5       **A.     Settlement Amount.** The Parties agree to settle this Action for the Gross Settlement  
6 Amount of \$ 400,000.00. There shall be no reversion to Defendants or Releasees. The Gross Settlement  
7 Amount and other actions and forbearances taken by Defendants and Releasees shall constitute adequate  
8 consideration for the Class Settlement and will be made in full and final settlement of: (a) the Released  
9 Claims, (b) Class Attorneys' Fees and Expenses, (c) Settlement Administrative Expenses, (d) the Service  
10 Awards, (e) PAGA Payment to the LWDA, and (f) any other obligation of Defendants and Releasees  
11 under this Stipulation. After the Court issues an order preliminarily approving this Class Settlement, the  
12 Settlement Administrator will distribute the Class Notice to the Settlement Class Members, which shall  
13 describe the terms of the Class Settlement and procedures to opt out, object or participate in the Class  
14 Settlement.

15       **B.     Service Award for the Class Representatives.** The Class Representative may petition  
16 the Court to approve a Service Award in an amount up to \$7,500.00 each (\$15,000 total) for their efforts  
17 on behalf of the Settlement Class in this Action, including assisting in the investigation, sitting for their  
18 depositions, and consulting with Class Counsel and providing crucial documents to Class Counsel.  
19 Defendants and Releasees shall not oppose any request by the Class Representative for a Service Award  
20 in such an amount. Any Service Award approved by the Court shall be paid to the Class Representatives  
21 from the Gross Settlement Amount and shall be in addition to any distribution to which he or she may  
22 otherwise be entitled as a Settlement Class Member and Aggrieved Employee. The Service Award shall  
23 not be considered wages, and the Settlement Administrator shall issue the Class Representatives an IRS  
24 Form 1099 reflecting such payment. The Class Representatives shall be responsible for the payment of  
25 any and all taxes with respect to his Service Awards and shall hold Defendants and Releasees harmless  
26 and indemnify Defendants and Releasees from any and all liability with regard thereto. If Plaintiffs'  
27 request for a service award is not approved or is reduced by the Court, the fact the amount was reduced  
28 shall not be cause to cancel the Agreement and any amount not approved or reduced by the Court added

1 to the amount of the Net Settlement to be distributed to the participating Class Members.

2 **C. Payment to Class Participants.** Each Class Participant shall be eligible to receive  
3 payment of the Individual Settlement Amount and shall receive a portion of the Net Settlement Amount  
4 on a pro rata basis calculated by dividing the total number of pay periods worked by an individual Class  
5 Participant during the Class Period by the total number of pay periods worked by all Class Participants  
6 during the Class Period. As to a Class Member who opts out of the Settlement by submitting a valid  
7 Request for Exclusion (as defined below) and/or whose Notice of Settlement is determined to be  
8 undeliverable after reasonable re-mailing efforts made by the Settlement Administrator, the Class  
9 Member's Total Settlement Payment will not be paid to the Class Member and will be added to the Net  
10 Settlement Amount and re-distributed among eligible Participating Class Members on a pro-rata basis.

11 **D. Payment to Aggrieved Employees.** The portion of the PAGA penalty payment allocated  
12 to Class Members who worked during the PAGA Covered Period (February 2, 2021 and February 10,  
13 2023), shall be distributed to the Aggrieved Employees who worked during the PAGA Covered Period  
14 regardless of whether or not they opt out of the Settlement.

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

1           **F.     No Effect on Employee Benefit Plans.** Neither the Class Settlement nor any amounts  
2 paid under the Class Settlement will modify any previously credited hours, days, or weeks of service  
3 under any employee benefit plan, policy or bonus program sponsored by Defendants or Releasees. Such  
4 amounts will not form the basis for additional contributions to, benefits under, or any other monetary  
5 entitlement under Defendants or Releasees' sponsored benefit plans, policies, or bonus programs. The  
6 payments made under the terms of this Stipulation shall not be applied retroactively, currently, or on a  
7 going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of  
8 any of Defendants or Releasees' benefit plan, policy, or bonus program. Defendants and Releasees retain  
9 the right to modify the language of its benefits plans, policies and bonus programs to effect this intent  
10 and to make clear that any amounts paid pursuant to this Stipulation are not for "pay periods" or any  
11 similar measuring term as defined by applicable plans, policies and bonus programs for purpose of  
12 eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are  
13 not required by this Stipulation. Defendants and Releasees do not consider the Class Settlement payments  
14 "compensation" for purposes of determining eligibility for, or benefit accrual within, any benefit plans,  
15 policies, or bonus programs, or any other plan sponsored by Defendants or Releasees.

16           **G.     Class Counsels' Attorneys' Fees and Expenses.** As part of the motion for final approval  
17 of the Class Settlement, Class Counsel may submit an application for an award of Class Attorney Fees  
18 and Expenses with the fee portion not to exceed one third of the Gross Settlement Amount (*i.e.*,  
19 \$133,333.33) and the award of costs and expenses of up to an additional \$30,000.00. As a condition of  
20 this Class Settlement, Class Counsel has agreed to pursue fees only in the manner reflected by this  
21 Section. Any Class Attorneys' Fees and Expenses awarded by the Court shall be paid from the Gross  
22 Settlement Amount in arriving at the Net Settlement Amount and shall not constitute payment to any  
23 Settlement Class Members. If Class Counsel voluntarily reduces the request for Class Attorney Fees or  
24 Expenses or if the Court's award of Class Attorney Fees or Expenses is less than set forth above, the Net  
25 Settlement Amount shall be recalculated to reflect the actual Class Attorney Fees and Expenses awarded  
26 and any amounts not awarded by the Court shall be distributed to the Class.

27           The Class Attorney Fees and Expenses approved by the Court shall encompass: (a) all work  
28 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to represent

the Settlement Class through the date of this Stipulation; (b) all work to be performed and costs to be incurred in connection with approval by the Court of the Class Settlement; (c) all work to be performed and costs and expenses, if any, incurred in connection with administering the Class Settlement through the Effective Date and dismissal of the Action, with prejudice; and (d) may be based on the Catalyst Theory, Common Fund Doctrine, and/or other basis.

**V. SETTLEMENT ADMINISTRATION COSTS AND EXPENSES**

**A. The Settlement Administrator's Costs and Expenses.** All costs and expenses due to the Settlement Administrator in connection with its administration of the Class Settlement, including, but not limited to, providing the Class Notice, locating Settlement Class Members, processing Opt-Out requests and objections, and calculating, administering, and distributing Individual Settlement Amounts to the Class Participants and related tax forms, shall be paid from the Gross Settlement Amount, and shall not exceed \$20,000.00.

**B. Payment by Defendants.** Defendants will deposit the Gross Settlement Amount the first business day following the last of the following occurrences: (i) in the event that no objections are filed and no appeal is filed sixty-five (65) calendar days after final approval is granted; or (ii) in the event an objection is filed the funding will be due thirty (30) calendar days after the deadline to appeal has expired provided that the objector has either filed a motion to intervene and/or a motion to vacate the judgment and appeals both the judgment and either the motion to intervene or motion to vacate judgment. In the event an appeal is filed the funds are due within thirty (30) calendar days of the resolution of the appeal presuming that the court of appeal upholds the settlement.

**VI. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS**

**A. The Settlement Administrator.** The Settlement Administrator will be responsible for mailing the Class Notice to Settlement Class Members, handling inquiries from Settlement Class Members concerning the Class Notice, determination of Individual Settlement Amounts, maintaining the settlement funds in an appropriate account, preparing, administering and distributing Individual Settlement Amounts to Class Participants, issuing a final report and performing such other duties as the Parties may direct.

On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and

1 Defense Counsel summarizing any relevant information and updating them as to the number of validated  
2 and timely objections and Opt-Out Requests. The Settlement Administrator will serve on Class Counsel  
3 and Defense Counsel, via e-mail, date-stamped copies of the original Opt-Outs and objections no later  
4 than five (5) days after their receipt. The Settlement Administrator will provide Class Counsel with proof  
5 of mailing of the Class Notice, without listing individual Class Member names which the Settlement  
6 Administrator will file with the Court at the time Class Counsel files its motion in support of the Court's  
7 Final Approval and Fairness Hearing.

8 No later than fourteen (14) days prior to the Final Approval and Fairness Hearing, the Settlement  
9 Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary  
10 information regarding (a) the total amount of final Individual Settlement Amounts of each Class  
11 Participant (b) the number of Class Participants to receive such payments, and (c) the final number of  
12 Opt-Outs and objections.

13 Administrative Expenses shall not exceed \$20,000.00 unless the escalator clause is triggered.  
14 Prior to the calculation and distribution of the Individual Settlement Amounts, the Settlement  
15 Administrator shall calculate the total Administrative Expenses through the conclusion of their services  
16 and such actual amount will be deducted from the Gross Settlement Amount prior to the final calculation  
17 of the Individual Settlement Amounts. If the escalator clause is triggered and the cost of administration  
18 is more than \$20,000.00, the additional cost will come from the increased Gross Settlement Amount in  
19 accordance with the escalator provision.

20 **B. Notice to Settlement Class Members.** Notice shall be provided to Settlement Class  
21 Members in the following manner: Within 10 days after the Preliminary Approval Date, Defendants shall  
22 provide the Settlement Administrator with a list of Class Members containing names, social security  
23 numbers, last-known addresses and phone numbers, and the total number of pay periods worked by each  
24 Class Member during the Class Period and PAGA Period (the "Database"). The Notice shall be  
25 distributed in English and Spanish.

26 Within 28 days following the Preliminary Approval Date, the Settlement Administrator shall  
27 determine the number of pay periods for each Settlement Class Member and will perform a national  
28 change of address search for each Class Member, update the results based upon the search results,

1 populate the data for the estimated Individual Settlement Amount for each Settlement Class Member,  
2 and send each Settlement Class Member the Class Notice via first-class, United States mail. The Class  
3 Notice shall also contain an easily understood statement alerting the Class Members that, unless they  
4 elect to Opt-Out of the Class Settlement, the Settlement Class Member is releasing and waiving all  
5 Released Claims against the Released Parties.

6 The Class Notice will inform Settlement Class Members of his/her estimated Individual  
7 Settlement Amount share. Class Members may dispute Defendants' records of the number of pay periods  
8 worked during the Class Period by submitting information to the Settlement Administrator no later than  
9 45 days after being mailed the Class Notice by the Settlement Administrator, which is the defined  
10 "Response Deadline." Class Members may submit disputes directly to the Settlement Administrator by  
11 mail, fax, or personal delivery or other similar method. The Settlement Administrator will jointly work  
12 with Plaintiffs and Defendants to resolve disputes in good faith. If Plaintiffs and Defendants cannot agree  
13 over the pay periods to be credited, the Settlement Administrator shall make the final decision based on  
14 the information presented by the Settlement Class Member and Defendants.

15 **C. Opt-Out Procedure.** Settlement Class Members who do not timely Opt-Out of the Class  
16 Settlement will be deemed to participate in the Class Settlement and shall become a Class Participant  
17 without having to submit a claim form or take any other action. In order to Opt-Out of the Class  
18 Settlement, the Settlement Class Member must submit a letter or postcard by mail, fax, or personal  
19 delivery or other similar method to the Settlement Administrator by the Response Deadline. The Opt-  
20 Out request must state the Settlement Class Member's name and address for correspondence and identity  
21 verification purposes, be signed by the Class Member, and should either state words to the effect of "I  
22 WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN *AVALOS VS. XL COMPANIES*  
23 *LLC et al.*" or otherwise evidence a clear intent to be excluded from the Settlement. A request for  
24 exclusion or Opt-Out shall not be deemed invalid if it does not include the exact phrase "I WISH TO BE  
25 EXCLUDED FROM THE SETTLEMENT CLASS IN *AVALOS VS. XL COMPANIES LLC et al.*" as  
26 long as the Class Members intent to exclude themselves is evident from the written submission. Absent  
27 a good cause finding by the Court, any Opt-Out request that is not postmarked by the Response Deadline  
28 will be invalid. In the event that, prior to the Response Deadline, any Class Notice mailed to a Settlement

1 Class Member is returned as having been undelivered by the U.S. Postal Service, the Settlement  
2 Administrator shall perform a skip trace search and seek an address correction for such Settlement Class  
3 Member(s), and a second Class Notice will be sent to any new or different address obtained. Such  
4 Settlement Class Member(s) shall have an additional 14 days in which to Opt-Out.

5 If the Settlement Administrator determines that an Opt-Out request returned by a Settlement Class  
6 Member before the Response Deadline is deficient, then the Settlement Administrator shall mail a  
7 deficiency letter to that Settlement Class Member identifying the problem. If a Settlement Class Member  
8 submits both a dispute and an Opt-Out request, the Settlement Administrator shall make reasonable  
9 attempts to clarify as if the Opt-Out request were deficient. If the Class Member fails to cure the  
10 deficiency, the Opt-Out request shall be disregarded and the claim will be paid, and the Class Member  
11 will become bound by the judgment. Those Settlement Class Members who do not timely Opt-Out will  
12 be bound by the Release of Released Claims set forth in this Stipulation.

13 **D. Objections.** The Class Notice shall inform the Settlement Class Members of their right  
14 to object to the Class Settlement. Any Settlement Class Member who wishes to object to the Class  
15 Settlement should submit a written objection to the Settlement Administrator no later than the Response  
16 Deadline. All Class Member objections should include the Class Member's name, telephone number, and  
17 current address for correspondence and identity verification purposes, be signed by the Class Member,  
18 provide each specific reason in support of the objection, and be postmarked by the Response Deadline.  
19 Class Members also need not include legal arguments for their written objections to be considered. Class  
20 Members who do not submit a timely written objection may still appear at the final approval and fairness  
21 hearing and speak regarding any objection at the hearing. If an objector wishes to appear at the Final  
22 Approval and Fairness Hearing, in person or through an attorney, he or she need not file a notice of  
23 intention to appear at the same time as the objection is filed. Filing the notice of intention to appear is not  
24 necessary to preserve the right to appear at the Final Approval and Fairness Hearing. Absent Class  
25 Members need not file anything with the Court. The Settlement Administrator will promptly serve copies  
26 of any objection or notice of intention to appear on Class Counsel and Defense Counsel. Settlement Class  
27 Members may appear at the Final Approval Hearing, either in person (to the extent permitted during the  
28 COVID-19 pandemic), through a remote method authorized by the Court, or through a lawyer retained

at their own expense. If a Class Member submits both a Request for Exclusion and a written objection, the Settlement Administrator shall attempt to contact and determine whether the Class Member would like to withdraw either the Request for Exclusion or the objection. If the Class Member does not withdraw the Request for Exclusion or if the Settlement Administrator cannot contact a Class Member who submits both a Request for Exclusion and an objection, the Request for Exclusion shall be valid, and it shall be presumed that the Class Member does not wish to participate in the Settlement.

**E. Settlement Administrator Declaration.** At least 30 days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard to the mailing of the Class Notice and its attempts to locate Class Members. The declaration shall specify the number of Settlement Class Members to whom Class Notices were sent and the number of Settlement Class Members to whom Class Notices were not delivered, as well as information relating to the number of Opt-Outs and objectors. Class Counsel shall file this declaration with the Court.

## **VII. CLASS SETTLEMENT FUNDING AND DISTRIBUTION**

**A. Allocation of the Gross Settlement Amount.** The claims of all Settlement Class Members are settled for the Gross Settlement Amount of \$400,000.00, which will be allocated as follows:

- a. The Administrative Expenses, estimated not to exceed \$20,000.00;
- b. The Class Attorney Fees and Expenses not to exceed \$133,333.33 in fees and expenses not to exceed \$30,000.00;
- c. PAGA Payment of \$20,000.00, of which \$15,000.00 shall be paid to the LWDA;
- d. Service Awards, not to exceed \$15,000 (\$7,500 each) to Plaintiffs Alejandro Gonzalez Avalos and Jorge Gonzalez Avalos; and
- e. The Net Settlement Amount (including the Aggrieved Employees' Share of PAGA penalties) is estimated to be \$186,666.67.

For purposes of calculating the estimated Individual Settlement Amounts, the Settlement Administrator shall calculate the estimated Net Settlement Amount based on the estimated values in Section 1(a-d) prior to sending Notice to the Settlement Class Members. Prior to final distribution, the Settlement Administrator shall calculate the final Net Settlement Amount based on the actual values in

1 Section 1 (a-d).

2       **B.     Calculation of the Individual Settlement Amounts.** Individual Settlement Amounts to  
3 be paid to Class Participants shall be paid from the Net Settlement Amount. The portion of the Net  
4 Settlement Amount payable to each Class Participant will be calculated as follows: the Settlement  
5 Administrator shall divide the Net Settlement Amount by the total number of pay periods worked by the  
6 Class Members during the Class Period in order to determine the amount each Class Member is entitled  
7 to for each pay period s/he was employed by Defendants during the Class Period (“Pay Period Amount”).  
8 The Settlement Administrator will multiply the Pay Period Amount by the total number of pay periods  
9 worked by each Class Member during the Class Period to arrive at the Individual Settlement Amount for  
10 each Class Member. As to a Class Member who opts out of the Settlement by submitting a valid Request  
11 for Exclusion (as defined below) and/or whose Notice of Settlement is determined to be undeliverable  
12 after reasonable re-mailing efforts made by the Settlement Administrator, the Class Member’s Individual  
13 Settlement Payment will not be paid to the Class Member and will be added to the Net Settlement Amount  
14 and re-distributed among eligible Participating Class Members on a pro-rata basis.

15       Defendants and Releasees shall have no responsibility for deciding the validity of the Individual  
16 Settlement Amounts or any other payments made pursuant to this Stipulation, shall have no involvement  
17 in or responsibility for the determination or payment of Employee’s Taxes, and shall have no liability for  
18 any errors made with respect to such Employee’s Taxes. Plaintiffs and Class Participants shall be solely  
19 responsible for any and all tax obligation associated with their respective Individual Settlement Amounts.

20       **C.     Time for Payment of Attorney Fees and Expenses to Class Counsel.** The Settlement  
21 Administrator shall distribute to Class Counsel the attorneys’ fees and expenses approved by the Court  
22 to Class Counsel no later than 15 days after Defendants deposit the Gross Settlement Amount with the  
23 Settlement Administrator.

24       **D.     Time for Payment of Service Award to the Class Representatives.** The Settlement  
25 Administrator shall distribute to the Class Representatives any Service Award approved by the Court no  
26 later than 15 days after Defendants deposit the Gross Settlement Amount with the Settlement  
27 Administrator.

28       **E.     Time for Payment of PAGA Payment to the LWDA.** The Settlement Administrator

1 shall distribute to the LWDA the portion of the PAGA Payment due to it and approved by the Court no  
2 later than 15 days after Defendants deposit the Gross Settlement Amount with the Settlement  
3 Administrator.

4 **F. Time for Payment of Individual Settlement Amounts.** The Settlement Administrator  
5 shall mail the Individual Settlement Amount to each Class Participant, by first-class U.S. mail, to the  
6 last-known address no later than 15 days after the Defendants deposit the Gross Settlement Amount with  
7 the Settlement Administrator. Under no circumstances shall the Settlement Administrator distribute  
8 checks to Class Participants until all Individual Settlement Amounts have been considered, calculated,  
9 and accounted for, and all of the remaining monetary obligations have been calculated and accounted for.  
10 Within 200 days of the mailing of the Individual Settlement Amounts, the Settlement Administrator shall  
11 provide to Class Counsel a declaration of payment. In the event that any Class Participant is deceased,  
12 payment shall be made payable to the estate of that Settlement Class Member and delivered to the  
13 executor or administrator of that estate, unless the Settlement Administrator has received an affidavit or  
14 declaration pursuant to Cal. Probate Code § 13101, in which case payment shall be made to the affiant(s)  
15 or declarant(s).

16 **G. Time for Payment of Taxes and Required Withholding and Individual Settlement**  
17 **Amounts.** The Settlement Administrator shall make every effort to pay the Employee's Taxes and  
18 Required Withholding associated with each Class Participant's Individual Settlement Amount and mail  
19 the Individual Settlement Amount to each Settlement Class Member by first-class U.S. mail, to the last-  
20 known address within fifteen (15) calendar days after the Defendants and/or Releasees deposit the final  
21 installment payment of the Gross Settlement Amount with the Settlement Administrator. If the Settlement  
22 Administrator is not able to do so within the time period set forth above, it shall so inform Class Counsel  
23 and Defense Counsel and provide an approximate date by which the Employee's Taxes and Required  
24 Withholding shall be paid and the Individual Settlement Amounts will be mailed. Under no  
25 circumstances shall the Settlement Administrator distribute checks to Class Members until all Individual  
26 Settlement Amounts have been considered, calculated, and accounted for, and the all of the remaining  
27 monetary obligations have been calculated and accounted for. Within two-hundred (200) days of mailing  
28 each Class Participant's Individual Settlement Amount, the Settlement Administrator shall provide to

1 Class Counsel a declaration of payment to file with the Court. In the event that any Class Member is  
2 deceased, payment shall be made payable to the estate of that Settlement Class Member and delivered to  
3 the executor or administrator of that estate, unless the Settlement Administrator has received an affidavit  
4 or declaration pursuant to Cal. Probate Code § 13101, in which case payment shall be made to the  
5 affiant(s) or declarant(s).

6 **H. Non-Cashed Settlement Checks.** Any funds associated with checks that have not been  
7 cashed within 180 days, will become void and the Individual Settlement Amount associated with the un-  
8 cashed check shall be paid out in accordance with Civil Code section 384 to a *cy pres* agreed to by the  
9 Parties as required by Code of Civil Procedure section 384 or any other method of distribution consistent  
10 with Code of Civil Procedure section 384. The *cy pres* recipient shall be Court Appointed Special  
11 Advocates of Sacramento County, P.O. Box 278383, Sacramento, California 95827 or other mutually  
12 agreeable *cy pres* recipient should the Court not approve the Parties' proposed beneficiary and/or as  
13 otherwise consistent with Code of Civil Procedure section 384. The Parties, Class Counsel and Defense  
14 Counsel represent that they have no interest or relationship, financial or otherwise, with the intended *cy*  
15 *pres* Recipient.

16 **VIII. NULLIFICATION OF THIS STIPULATION**

17 **A. Non-Approval of the Stipulation.** In the event that the Court fails to approve the  
18 Settlement under the terms agreed to by the Parties, or if the appropriate appellate court fails to uphold  
19 or affirm the Settlement or if the Settlement Agreement is otherwise terminated: (1) the Settlement  
20 Agreement shall have no force and effect and the parties shall be restored to their respective positions  
21 prior to entering into it, and no Party shall be bound by any of the terms of the Settlement Agreement;  
22 (2) Defendants and Releasees shall have no obligation to make any payments to the Settlement Class  
23 Members, Plaintiffs, or Plaintiffs' counsel; (3) any preliminary approval order, final approval order or  
24 judgment, shall be vacated; and (4) the Settlement Agreement and all negotiations, statements,  
25 proceedings and data relating thereto shall be deemed confidential mediation settlement communications  
26 and not subject to disclosure for any purpose in any proceeding. However, the Parties shall first make  
27 good faith efforts to resolve any issues raised by the Court during the approval process. The Parties shall  
28 take all actions as may reasonably be necessary to fulfill the terms of this Class Settlement and will not

1 abandon the Settlement unless the Court denies the Proposed Settlement with prejudice or evidence exists  
2 that Defendants failed to disclose a related case within the meaning of Rules of Court Rule 3.300.

3 **B. Parties' Rights to Void Class Settlement.** In the event that more than 10% of the Class  
4 Members submit elections to opt-out of the settlement, Defendants will have the right, but not the  
5 obligation, to rescind and terminate the Settlement without prejudice to its pre-settlement positions and  
6 defenses in the litigation. Should the threshold for opt-outs be exceeded, the Settlement Administrator  
7 shall notify lead counsel for all parties via email immediately. Should any party choose to void the Class  
8 Settlement under this paragraph, such party shall be responsible for all Settlement Administrator fees and  
9 costs actually incurred.

10 **C. Amounts Not Awarded by the Court.** In the event that the Court does not award any of  
11 the requested attorneys' fees, costs, settlement administration costs, and/or service awards, any amount  
12 not approved or awarded by the Court added to the amount of the Net Settlement to be distributed to the  
13 participating Class Members. The fact that such amounts were not awarded and/or were reduced shall  
14 not be cause to cancel the Agreement

15 **D. Invalidation.** Invalidation of any material portion of the Class Settlement shall invalidate  
16 the Class Settlement in its entirety, unless the Parties shall subsequently agree in writing that the  
17 remaining provisions of the Class Settlement are to remain in full force and effect.

18 **E. Stay Upon Appeal.** In the event of a timely appeal from the approval of the Class  
19 Settlement and judgment, the judgment shall be stayed, and Defendants shall not be obligated to fund the  
20 Gross Settlement Amount or take any other actions required by this Stipulation until all appeal rights  
21 have been exhausted by operation of law.

22 **IX. MOTION FOR COURT APPROVAL**

23 **A. Preliminary Approval.** Class Counsel will submit this Stipulation to the Court along  
24 with a Motion for Preliminary Approval of the Class Settlement. Each party shall cooperate to file the  
25 Motion for Preliminary Approval by June 1, 2023.

26 **B. Final Approval.** The Final Approval and Fairness Hearing shall be held before the Court  
27 unless the Court orders otherwise. At the Final Approval and Fairness Hearing, Plaintiffs shall move the  
28 Court for the entry of the final order certifying the Class for settlement purposes only and approving the

Class Settlement as being fair, reasonable, and adequate to the Class Participants within the meaning of California Rules of Court, Rule 3.769(c), (d) and (e) and for the entry of a final judgment of the Action consistent with the terms of the Class Settlement and California Rule of Court 3.769(h). Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may be required for the Court's determination. The Parties will comply with the Court's Procedural Guidelines for final Approval of Class Action Settlements and with Code of Civ. Proc. § 384 that the Parties participate in a compliance hearing regarding the distribution of funds unless the Court takes such a hearing off-calendar after reviewing the Settlement Administrator's declaration of compliance or pursuant to another Court order.

**X. RELEASES AND WAIVERS**

**A. Release of Claims by Settlement Class.** Upon the Effective Date, each Settlement Class Member who has not submitted a timely Opt-Out request, and Plaintiffs, each releases the Defendants and the Released Parties, and each of them, of and from any and all Released Claims during the Class Period.

It is the desire of the Parties and the Settlement Class Members to fully, finally, and forever settle, compromise, and discharge the Released Claims.

Each Settlement Class Member, except those who timely Opt-Out, will be bound to the release of Released Claims as a result of the Class Settlement and to the terms of the final judgment and the satisfaction of such judgment.

**B. PAGA Release of Claims for the State of California.** Upon the Effective Date, the State of California will be deemed to have released the PAGA Released Claims for alleged Labor Code violations committed against the Aggrieved Employees during the PAGA Period.

**C. Release of Claims by the Class Representative.** Plaintiffs Alejandro Gonzalez Avalos and Jorge Gonzalez Avalos, on behalf of themselves and their heirs, executors, administrators, and representatives, shall and do hereby forever release, discharge and agree to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorney fees and costs), known or unknown, at law or in equity, which they may now have or may have after the signing of this Stipulation, arising out of or in any way connected with their

employment with Defendants and Releasees including, the Released Claims, claims that were asserted or could have been asserted in the Complaint, and any and all transactions, occurrences, or matters between the Parties occurring prior to the date this Stipulation is fully executed. Without limiting the generality of the foregoing, this release shall include, but not be limited to, any and all claims under the (a) Americans With Disabilities Act, as amended; (b) Title VII of the Civil Rights Act of 1964, as amended; (c) the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e) the Age Discrimination in Employment Act, as amended; (f) the Fair Labor Standards Act, as amended; (g) the Equal Pay Act; (h) the Employee Retirement Income Security Act, as amended; (i) the Consolidated Omnibus Budget Reconciliation Act; (j) the Rehabilitation Act of 1973; (k) the Family and Medical Leave Act; (l) the Civil Rights Act of 1966; (m) the California Fair Employment and Housing Act; (n) the California Constitution; (o) the California Labor Code; (p) the California Government Code; (q) the California Civil Code; (r) the California Wage Orders, and (s) any and all other federal, state and local statutes, ordinances, regulations, rules and other laws, and any and all claims based on constitutional, statutory, common law or regulatory grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of contract or implied contract, fraud, misrepresentation, promissory estoppel or intentional and/or negligent infliction of emotional distress, or damages under any other federal, state or local statutes, ordinances, regulations, rules or laws. This release is for any and all relief, no matter how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and attorney fees and costs, and Plaintiffs hereby forever release, discharge and agree to hold harmless Defendants and the Released Parties from any and all claims for attorney fees and costs arising out of the matters released in this Stipulation.

Plaintiffs Alejandro Gonzalez Avalos and Jorge Gonzalez Avalos specifically acknowledge that they are aware of and familiar with the provisions of Section 1542, which provides as follows:

**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.**

Plaintiffs Alejandro Gonzalez Avalos and Jorge Gonzalez Avalos, being aware of Section 1542, hereby expressly waive and relinquish all rights and benefits they may have under Section 1542 as well

as any other statutes or common law principles of a similar effect. Plaintiffs Alejandro Gonzalez Avalos and Jorge Gonzalez Avalos may hereafter discover facts in addition to or different from those which they now knows or believes to be true with respect to the subject matter of all the claims referenced herein, but stipulates and agrees that, upon the Effective Date, Plaintiffs Alejandro Gonzalez Avalos and Jorge Gonzalez Avalos shall and hereby do fully, finally and forever settle and release any and all claims against the Defendants and the Released Parties, known or unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have been asserted upon any theory of law or equity without regard to the subsequent discovery of existence of such different or additional facts. Notwithstanding the foregoing, nothing in this Settlement Agreement shall serve to or be construed as releasing any non-releasable claims, such as claims for unemployment, that cannot be released as a matter of law.

**XI. DUTIES OF THE PARTIES**

**A. Mutual Full Cooperation.** The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Stipulation. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of this Class Settlement unless the Court denies the Proposed Settlement with prejudice. The Parties shall use their best efforts, including all efforts contemplated by this Stipulation and any other efforts that may become necessary by court order or otherwise, to effectuate this Stipulation and the terms set forth herein. As soon as practicable after execution of this Stipulation, Class Counsel, with the cooperation of Defendants and Defense Counsel, shall take all necessary and reasonable steps to secure the Court's approval of this Stipulation. The Parties will work together to make any non-material modifications of the Settlement requested by the Court to obtain approval of the Parties' Proposed Settlement and will work collaboratively together to obtain approval unless the Parties' Proposed Settlement is denied with prejudice and cannot be cured by making reasonable modifications to the Proposed Settlement Agreement. Defendants shall not attack any provisions of this Settlement Agreement, including, but not limited to Plaintiffs' Proposed Service Awards.

**B. Duty to Support and Defend the Class Settlement.** The Parties agree to abide by all of the terms of the Class Settlement in good faith and to support the Class Settlement fully and to use their best efforts to defend this Class Settlement from any legal challenge, as long as Defendants have

disclosed all related cases, whether by appeal or collateral attack.

**C. Duties Prior to Court Approval.** Class Counsel shall promptly submit this Stipulation to the Court for preliminary approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this Stipulation, Class Counsel shall apply to the Court for the entry of a preliminary order, scheduling a hearing on the question of whether the proposed Class Settlement should be approved as fair, reasonable, and adequate as to the Settlement Class Members, approving as to form and content the proposed Class Notice respectively and directing the mailing of the Class Notice to Settlement Class Members.

**XII. MISCELLANEOUS PROVISIONS**

**A. Escalator Clause.** Defendants represented that there were approximately 568 Class Members and 13,493 pay periods/workweeks as of February 10, 2023. If, when the notices are prepared for distribution following preliminary approval of the settlement, the aggregate number of Class Members as of February 10, 2023 exceeds the estimate of 568 Class Members by more than 10% (e.g. if there are more than 625 Class Members) or if the number of pay periods/workweeks as of February 10, 2023 exceeds the estimate of 13,493 pay periods/workweeks (e.g. if there are more than 14,843 pay periods/workweeks), Defendants agree to increase the Gross Settlement Amount on a pro-rata basis equal to the increase in number of employees and/or pay periods relative to the estimates. By way of example, if there turn out to be 650 Class Members, the settlement shall be increased by 12.6% (82/650), which is the amount of increase relative to the initial estimate.

**B. Defendants' Right to Withdraw.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendants may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendants will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendants must notify Class Counsel and the Court of its election to withdraw not later than seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

1           **C.     No Solicitation.** The Parties separately agree that they and their respective counsel and  
2 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the  
3 Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate  
4 with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

5           **D.     Use and Return of Class Data.** Information provided to Class Counsel pursuant to Cal.  
6 Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by  
7 Defendants, including Class Data provided through the Administrator, in connection with the mediation,  
8 other settlement negotiations, or in connection with the Settlement, may be used only with respect to this  
9 Settlement, and no other purpose, and may not be used in any way that violates any existing contractual  
10 agreement, statute, or rule of court. Not before one (1) year after the date when the Court discharges the  
11 Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds,  
12 Plaintiffs and Class Counsel shall destroy, all paper and electronic versions of Class Data received from  
13 Defendants.

14           **E.     Calendar Days.** Unless otherwise noted, all reference to "days" in this Agreement shall  
15 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or  
16 federal legal holiday, such date or deadline shall be on the first business day thereafter.

17           **F.     Different Facts.** The Parties hereto, and each of them, acknowledge that, except for  
18 matters expressly represented herein, the facts in relation to the dispute and all claims released by the  
19 terms of this Stipulation may turn out to be other than or different from the facts now known by each  
20 party and/or its counsel, or believed by such Party or counsel to be true, and each Party therefore expressly  
21 assumes the risk of the existence of different or presently unknown facts and agrees that this Stipulation  
22 shall be in all respects effective and binding despite such difference.

23           **G.     No Prior Assignments.** The Parties represent, covenant, and warrant that they have not  
24 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to  
25 any person or entity any portion of any liability, claim, demand, action, cause of action, or right herein  
26 released and discharged except as set forth herein.

27           **H.     Non-Admission.** Nothing in this Stipulation shall be construed as or deemed to be an  
28 admission by any Party of any liability, culpability, negligence, or wrongdoing toward any other Party,

1 or any other person, and the Parties specifically disclaim any liability, culpability, negligence, or  
2 wrongdoing toward each other or any other person. Each of the Parties has entered into this Stipulation  
3 with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and  
4 contingencies. Nothing herein shall constitute any admission by Defendants or Releasees of wrongdoing  
5 or liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute any  
6 admission by Defendants regarding the merits of the Claims in this Action. Nothing herein shall constitute  
7 an admission by Defendants that the Action was properly brought as a class or representative action other  
8 than for settlement purposes. To the contrary, Defendants have denied and continue to deny each and  
9 every material factual allegation and all Claims. To this end, the Class Settlement of the Action, the  
10 negotiation and execution of this Stipulation, and all acts performed or documents executed pursuant to  
11 or in furtherance of this Stipulation or the Class Settlement are not, shall not be deemed to be, and may  
12 not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendants or  
13 Releasees or of the truth of any of the factual allegations in the Complaint in the Action; and are not,  
14 shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on  
15 the part of Defendants or Releasees in any civil, criminal or administrative proceeding in any court,  
16 administrative agency or other tribunal. The Parties agree that class certification and representative  
17 treatment is for purposes of this Settlement only. If for any reason the Court does grant Preliminary  
18 Approval, Final Approval or enter Judgment, Defendants reserve the right to contest certification of any  
19 class for any reasons, and Defendants reserve all available defenses to the claims in the Action, and  
20 Plaintiffs reserve the right to move for class certification on any grounds available and to contest  
21 Defendants' defenses. The Settlement, this Agreement and the Parties' willingness to settle the Action  
22 will have no bearing on, and will not be admissible in connection with, any litigation (except for  
23 proceedings to enforce or effectuate the Settlement and this Agreement).

24 **I. Non-Retaliation.** Defendants understand and acknowledge that it has a legal obligation  
25 not to retaliate against any Settlement Class Member who elects to participate in the Class Settlement or  
26 elects to Opt-Out of the Class Settlement. Defendants will refer any inquiries regarding this Class  
27 Settlement to the Settlement Administrator or Class Counsel and will not discourage Settlement Class  
28 Members who are employees, directly or indirectly, from participating in the Settlement or encourage or

1 advise Settlement Class Members to opt out or object to the Class Settlement.

2       **J.     Construction.** The Parties hereto agree that the terms and conditions of this Stipulation  
3 are the result of lengthy, intensive, arms-length non-collusive negotiations between the Parties and that  
4 this Stipulation is not to be construed in favor of or against any party by reason of the extent to which  
5 any party or its counsel participated in the drafting of this Stipulation. If any of the dates in the Stipulation  
6 fall on a weekend, bank or court holiday, the time to act shall be extended to the next business day.

7       **K.     Governing Law.** This Stipulation is intended to and shall be governed by the laws of the  
8 State of California, without regard to conflict of law principles, in all respects, including execution,  
9 interpretation, performance, and enforcement.

10       **L.     Notices.** Except for Settlement Class Member notices required to be made by the  
11 Settlement Administrator, any and all notices or other communications required or permitted under this  
12 Stipulation shall be in writing and shall be sufficiently given if delivered in person to the party or their  
13 counsel by U.S. certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the  
14 address of the party appearing in this Stipulation.

15       **M.     Captions and Interpretations.** Section titles or captions contained herein are inserted as  
16 a matter of convenience and for reference only and in no way define, limit, extend, or describe the scope  
17 of this Stipulation or any provision thereof.

18       **N.     Modification.** This Stipulation may not be changed, altered, or modified, except in  
19 writing signed by the Parties and approved by the Court. This Stipulation may not be discharged except  
20 by performance in accordance with its terms or by a writing signed by the Parties.

21       **O.     Integration Clause.** This Stipulation contains the entire agreement between the Parties  
22 relating to the Class Settlement of the Action and the transactions contemplated thereby, and all prior or  
23 contemporaneous agreements, understandings, representations, and statements, whether oral or written,  
24 and whether by a party or such party's legal counsel, are hereby superseded. No rights under this  
25 Stipulation may be waived except in writing as provided above.

26       **P.     Successors and Assigns.** This Stipulation shall be binding upon and inure to the benefit  
27 of the Parties and Settlement Class Members (excluding only persons who timely Opt-Out) and their  
28 respective present and former heirs, trustees, executors, administrators, representatives, officers,

1 directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors,  
2 consultants, pension and welfare benefit plans, fiduciaries, parent companies, subsidiaries, affiliates,  
3 related companies, joint ventures, predecessors, successors, and assigns.

4 **Q. Corporate Signatories.** Any person executing this Stipulation or any such related  
5 document on behalf of a corporate signatory or on behalf of a partnership hereby warrants and promises,  
6 for the benefit of all Parties hereto, that such person has been duly authorized by such corporation or  
7 partnership to execute this Stipulation or any such related document.

8 **R. Execution in Counterparts.** This Stipulation shall become effective upon its execution  
9 by all of the undersigned and may be executed electronically (such as via DocuSign). The Parties may  
10 execute this Stipulation in counterparts, and execution of counterparts shall have the same force and  
11 effect as if all Settling Parties had signed the same instrument.

12 **S. Code of Civ. Proc. Section 664.6.** The Court shall retain jurisdiction pursuant to  
13 California Code of Civil Procedure § 664.6.

14 **T. Attorneys' Fees, Costs and Expenses.** Except as otherwise specifically provided for  
15 herein, each Party shall bear his or her or its own attorney fees, costs, and expenses, taxable or otherwise,  
16 incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other  
17 party to this Stipulation.

18 **IN WITNESS WHEREOF,** the Parties and their counsel have executed this Stipulation on the  
19 date below their signatures or the signature of their representatives. The date of the Stipulation shall be  
20 the date of the latest signature.

21 ///

22 Dated: May 16, 2023

23   
24 Alejandro Gonzalez Avalos as the Class and PAGA  
Representative

25 Dated: May \_\_, 2023

26 \_\_\_\_\_  
27 Jorge Gonzalez Avalos as the Class and PAGA  
28 Representative

1 directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors,  
2 consultants, pension and welfare benefit plans, fiduciaries, parent companies, subsidiaries, affiliates,  
3 related companies, joint ventures, predecessors, successors, and assigns.

4 **Q. Corporate Signatories.** Any person executing this Stipulation or any such related  
5 document on behalf of a corporate signatory or on behalf of a partnership hereby warrants and promises,  
6 for the benefit of all Parties hereto, that such person has been duly authorized by such corporation or  
7 partnership to execute this Stipulation or any such related document.

8 **R. Execution in Counterparts.** This Stipulation shall become effective upon its execution  
9 by all of the undersigned and may be executed electronically (such as via DocuSign). The Parties may  
10 execute this Stipulation in counterparts, and execution of counterparts shall have the same force and  
11 effect as if all Settling Parties had signed the same instrument.

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13 California Code of Civil Procedure § 664.6.

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15 herein, each Party shall bear his or her or its own attorney fees, costs, and expenses, taxable or otherwise,  
16 incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other  
17 party to this Stipulation.

18 **IN WITNESS WHEREOF,** the Parties and their counsel have executed this Stipulation on the  
19 date below their signatures or the signature of their representatives. The date of the Stipulation shall be  
20 the date of the latest signature.

21 ///

22 Dated: May \_\_, 2023

23 \_\_\_\_\_  
Alejandro Gonzalez Avalos as the Class and PAGA  
24 Representative

25 Dated: May 17, 2023

26 \_\_\_\_\_  
Jorge Gonzalez Avalos as the Class and PAGA  
27 Representative  
28

1 Dated: May <sup>23</sup>\_\_\_\_\_, 2023

DocuSigned by:

*Russell Bay*

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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

6 **APPROVED AS TO FORM:**

7 05 / 23 / 2023

8 Dated: May \_\_\_, 2023

**WINSTON LAW GROUP, P.C.**

*David Winston*

By: DAVID S. WINSTON

Attorneys for Plaintiffs, the Proposed Settlement Class, and the Aggrieved Employees

13 Dated: May 23, 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