

PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT AND RELEASE

This Private Attorneys General Act Settlement Agreement and Release (“Agreement”) is made by and between Plaintiff ARTURO VERA LOPEZ (“Plaintiff”), individually, and on behalf of all other aggrieved employees (the “Aggrieved Employees,” as described below), and as a private attorney general on behalf of the State of California pursuant to Labor Code section 2699, *et seq.*, the Private Attorneys General Act (“PAGA”) on the one hand, and Defendants GREEN VALLEY LANDSCAPE, INC., MITSUGU MORI (“Defendants”), on the other hand. Plaintiff and Defendants are collectively referred to herein as “the Parties.”

This Agreement, and the settlement embodied herein, shall be binding on Plaintiff, the Aggrieved Employees he represents, the State of California, and Defendants, subject to the approval of the Court.

WHEREAS, on December 2, 2022, Plaintiff filed a complaint (“Complaint”) in the Superior Court of California, County of Monterey, entitled *Arturo Vera Lopez v. Green Valley Landscape, Inc., Mitsugu Mori*, Case No. 22CV003731 (the “Lawsuit”). Defendants filed their General Denial to the Complaint on January 31, 2023. The Lawsuit asserts representative claims for civil penalties payable to plaintiff, other aggrieved employees, and the State of California pursuant to PAGA, based on allegations that Defendants: (1) failed to compensate for all hours worked; (2) failed to pay minimum wages; (3) failed to pay overtime compensation; (4) failed to provide accurate itemized wage statements; (5) failed to pay wages when employment ends; (6) failed to pay wages owed every pay period; (7) failed to give rest breaks; (8) failed to give meal breaks; and (9) failed to reimburse for business expenses. Specifically, the Representative PAGA Claims are PAGA claims asserted or which could have been asserted in the Lawsuit and both or either of Plaintiff’s complaint and/or PAGA Notice filed with the LWDA, including all PAGA claims stated expressly or by implication in the Notice filed with the LWDA or that could have been alleged based on the facts and circumstances set forth therein. The applicable PAGA Notice related to the Lawsuit is attached hereto as **Exhibit A** (all of the foregoing is collectively referred to as Plaintiff’s “Representative PAGA Claims”).

WHEREAS, Plaintiff timely sent notice to the LWDA of his intent to pursue representative actions pursuant to PAGA, on behalf of himself, other aggrieved employees, and the State of California as well as on behalf of a group of aggrieved employees (the notice by Plaintiff to the LWDA is collectively referred to as the “PAGA Notice” herein, attached as **Exhibit A**).

WHEREAS, during the pendency of the Action, the Parties conducted significant investigation of the facts and law and engaged in an informal discovery exchange prior to mediation. In response to Plaintiff’s Counsel’s informal discovery requests, Defendants provided Plaintiff’s Counsel with information and documents pertaining to Plaintiff and the Aggrieved Employees, and the claims in the Lawsuit, including time punch and payroll data, to provide Plaintiff’s Counsel the opportunity to investigate Plaintiff’s allegations and the PAGA claims.

WHEREAS, on March 31, 2023, the Parties attended a full day mediation with experienced wage-and-hour and employment law mediator Eleanor Barr and were able to reach a resolution. As a result, the Parties agreed to settle Plaintiff’s Representative PAGA Claims, taking into account all known facts and circumstances including the difficulty of proving some of Plaintiff’s claims,

potential defenses asserted by Defendants, the uncertainty associated with litigation, the risks of significant delay, and numerous potential appellate issues.

WHEREAS, for purposes of this Settlement, the Aggrieved Employees are defined as: “All non-exempt employees who are or were employed by Defendants within the State of California from March 30, 2021 through March 31, 2023.”

WHEREAS, for purposes of this Settlement, the PAGA Period is defined as the period from March 30, 2021 through March 31, 2023.

WHEREAS, the Parties understand, acknowledge, and agree that this PAGA settlement constitutes a compromise of Plaintiff’s Representative PAGA Claims, and that it is the desire and intention of the Parties to effect a final and complete resolution of the Representative PAGA Claims that Plaintiff and the Aggrieved Employees have or may have against Defendants and each of their past or present affiliates, d/b/a’s, owners, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parent companies and attorneys (collectively, the “Released Parties”). The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission by Defendants or the Released Parties of any wrongdoing or liability. Specifically, Defendants and the Released Parties deny any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuit and the PAGA Notice. Defendants and the Released Parties, among other things, contend that they have complied at all times with the California Labor Code and all applicable California laws.

WHEREAS, the Parties believe and agree that this Agreement provides for a fair, adequate, and reasonable resolution of the Representative PAGA Claims, and have arrived at the settlement after extensive, arms-length negotiations, taking into account all relevant factors, present and potential.

WHEREAS, California Labor Code § 2699(k)(2) requires Court review and approval of any settlement of a civil action filed pursuant to PAGA.

WHEREAS, based on their own independent investigations and evaluations, Defendants and Plaintiff and their respective counsel are of the opinion that the amount and terms of the Settlement are reasonable and adequate and are in the best interests of the Plaintiff, the Aggrieved Employees, and Defendants in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, counsel for Plaintiff and the Aggrieved Employees, Messrelian Law Inc., believes that the settlement amount entered into is in the best interests of the Aggrieved Employees and that the settlement for each Aggrieved Employee is fair, reasonable, and adequate, given the inherent risk of litigation.

WHEREAS, the Parties recognize that in accordance with Labor Code section 2699(l), Court approval is required in the event of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. *See also Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074 (2017) (“PAGA authorizes a representative action without the need for class certification”); *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (“a PAGA suit is fundamentally different than a class action” in that PAGA

has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action); *Williams v. Sup. Ct.*, 3 Cal. 5th 531, 546-47 (2017) (“PAGA does not make other potentially aggrieved employees parties or clients of plaintiff’s counsel, does not impose on a plaintiff or counsel any express fiduciary obligations, and does not subject a plaintiff or counsel to scrutiny with respect to the ability to represent a large class”).

Therefore, in consideration of the promises and agreements contained herein, and to avoid the uncertainty, risks, costs, and delays associated with further litigation, the Parties agree and covenant as follows:

1. **Effective Date.** The effective date (“Effective Date”) of this Agreement shall mean the following: (a) the date of entry of the order of the court approving this settlement; or (b) if a timely appeal is made, ten (10) business days after the final resolution of that appeal if the appeal is rejected, the settlement is upheld, and the settlement approval order is no longer subject to further judicial review.

2. **PAGA Released Claims/Effect of Judgment on Aggrieved Employees and LWDA.** The Parties agree and acknowledge that, to the maximum extent permitted by law, the final judgment entered pursuant to this settlement will bind all those who would be bound by a judgment if the action had been brought by the LWDA, including Plaintiff, the LWDA, and the Aggrieved Employees, with respect to the recovery of civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, *et. seq.* only, against the “Released Parties.” It is expressly understood and agreed that this settlement only includes a full release of the PAGA claims asserted in the Lawsuit and Plaintiff’s Complaint and/or PAGA Notice filed with the LWDA attached as **Exhibit A**, including all PAGA claims stated expressly or by implication in the Notice filed with the LWDA or that could have been alleged based on the facts and circumstances set forth therein and any related claims for attorneys’ fees, costs, or interest resulting based on the PAGA cause of actions (all of the foregoing are collectively referred to as Plaintiff’s “Representative PAGA Claims”). With the exception of Plaintiff, this settlement shall not impact Aggrieved Employees’ ability to assert claims other than PAGA claims arising from the alleged foregoing violations of the Labor Code.

3. **Notice to LWDA.** Pursuant to California Labor Code § 2699(k)(2), Plaintiff shall submit to the LWDA a copy of this Agreement at the same time that Plaintiff submits it to the Court for approval.

4. **No Right to Opt Out.** The parties agree that there is no statutory right for any Aggrieved Employee to opt out or otherwise exclude him or herself from the Settlement.

5. **Gross Settlement Amount.** Defendant agrees to pay, in accordance with the terms set forth herein, the total sum of Two Hundred Thirty Thousand Dollars and No/100 Cents (\$230,000.00) as the non-reversionary gross settlement amount (the “Gross Settlement Amount”) in full settlement of the Lawsuit. The Gross Settlement Amount, which represents the total amount payable under this Settlement by Defendant (subject to the Escalator Clause described below), will be allocated as follows:

- a. PAGA Counsel’s attorneys’ fees and costs request of up to 35% of the Gross Settlement Amount (\$80,500) (“PAGA Counsel’s Fees”) and PAGA

Counsel's separate request for reasonable litigation costs incurred in this matter ("PAGA Counsel's Costs") not to exceed \$9,500.00. Defendants will not oppose these requests. To the extent that the Court approves less than the amount of attorney's fees and costs that PAGA Counsel requests, any reduced amount shall revert to the PAGA Fund.

- b. Administration costs estimated not to exceed \$4,000 to be paid to the Settlement Administrator ("Administration Costs").
- c. The remainder of the Gross Settlement Amount (the "PAGA Fund") after deducting items (a) and (b) is approximately \$136,000, and shall be designated as PAGA Penalties to be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699(i), with 75% paid to the LWDA (the "LWDA PAGA Portion") and 25% paid to the Aggrieved Employees (the "Aggrieved Employees' PAGA Portion") on a pro-rata basis as set forth in Paragraph 12 below.

6. **Allocation Adjustment.** The parties agree that should the Court deny approval of the Gross Settlement Amount, the parties agree to renegotiate in good faith in an effort to obtain approval of the settlement.

7. **Allocation and Calculation of the PAGA Penalties.** Each Aggrieved Employee shall receive a portion of the PAGA Penalties on a pro-rata basis. Defendants will calculate: (i) the total number of pay periods worked by each Aggrieved Employee during the PAGA Period, and (ii) the total number of pay periods worked by all Aggrieved Employees during the PAGA Period. To determine each Aggrieved Employee's payment from the Aggrieved Employees' PAGA Portion, Defendants will use the following formula: $\text{Settlement Payment} = \text{Aggrieved Employees' PAGA Portion} \times [\text{Pay Periods Worked by Individual Aggrieved Employee during the PAGA Period} \div \text{Total Pay Periods Worked by All Aggrieved Employees during the PAGA Period}]$.

8. **Escalator Clause:** Defendants estimate that as of March 31, 2023, there were approximately 3,080 pay periods for all Aggrieved Employees during the PAGA Period. If it is determined that the pay periods during the PAGA Period exceeds 3,080 by more than ten percent (10%), i.e., exceeds 3,388 pay periods for all PAGA Members, then the Gross Settlement Amount will increase proportionately according to the number of additional pay periods over ten percent (10%).

9. **Tax Treatment of Settlement Amounts.** With regard to settlement payments to Aggrieved Employees, IRS Form 1099s will be issued by the Settlement Administrator, if applicable. IRS Form 1099s are used for payments of miscellaneous income that is not considered wages, such as the penalty payments at issue in this Settlement. Nothing in this Settlement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Defendants, their counsel and Plaintiff's and the Aggrieved Employees' counsel are not responsible for any employee tax obligations regarding the allocation of the settlement payments. Payment of the portion allocated to PAGA Counsel's fees and costs will be reflected in a Form 1099 to PAGA Counsel, who shall assume full responsibility and liability for the payment of taxes due on such payments.

10. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS OR ITS OWN, INDEPENDENT LEGAL AND TAX ADVISERS FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

11. PAGA Settlement Payment Procedures.

- a. Within 14 calendar days after the Effective Date, Defendants shall deposit the Gross Settlement Amount of \$230,000.00 with the Settlement Administrator. Within 14 calendar days after the Effective Date, Defendants shall also provide the Settlement Administrator with a list of all Aggrieved Employees with each listed employee’s full name, last known mailing address, social security number, the actual number of pay periods worked by him or her during the PAGA Period. The Settlement Administrator shall run all the addresses of Aggrieved Employees through the United States Postal Service NCOA database to obtain current address information.
- b. Within 28 calendar days from the date the Gross Settlement Amount has been deposited with the Settlement Administrator, the Settlement Administrator shall:
 - i. Distribute a total of Twenty-Five percent (25%) of the PAGA Fund to the Aggrieved Employees, along with the Notice of PAGA Representative Action Settlement (attached hereto as **Exhibit B**). Aggrieved Employees shall not be required to make claims to receive their share of the PAGA settlement. The payment checks shall be sent to each Aggrieved Employee by U.S. First Class mail to the Aggrieved Employee’s last known mailing address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to the Settlement Administrator. It

will be conclusively presumed that an Aggrieved Employee's individual settlement payment check was received if the payment check has not been returned within thirty (30) days of the original mailing. All uncashed settlement checks shall be sent to the California State Controller's Unclaimed Property division.

- ii. Distribute a total of Seventy-Five percent (75%) of the PAGA Fund to the LWDA.
 - iii. Distribute PAGA Counsel's fees and costs, as approved by the Court.
 - iv. Distribute payment to itself for services as Settlement Administrator, as approved by the Court.
- c. Settlement Checks issued to Aggrieved Employees pursuant to this Agreement will expire one hundred and eighty (180) days from the date they are mailed by the Settlement Administrator. All money represented by uncashed settlement checks shall be sent to the California State Controller's Unclaimed Property division in the name(s) of the individual(s) who did not negotiate a settlement check during the negotiation period.
- d. The Parties and their counsel shall not bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

12. Settlement Administrator. The Settlement Administrator shall be responsible for sending notices, calculating settlement payments, preparing all checks and mailings, and complying with all requirements set forth herein. As noted above, the costs of the Settlement Administrator shall be paid out of the Gross Settlement Amount, and the Parties agree to use ILYM Group, Inc. as the Settlement Administrator.

13. Duties of the Parties Related to Approval. Promptly upon execution of this Agreement, Plaintiff shall file his motion for approval of the proposed Settlement and for the entry of an order approving this Settlement as required by Labor Code section 2699(l). The approval motion will request Court approval of the following: (1) the terms of this Agreement, (2) PAGA Counsel's Fees and PAGA Counsel's Costs, (3) payments to Aggrieved Employees and the LWDA, (4) payment to the Settlement Administrator, and (5) Final Judgment. In conjunction with the approval motion, Plaintiff shall submit a proposed Final Judgment to the Court.

14. Interim Stay of Proceedings. The Parties agree to refrain from further litigation of this matter, except such proceedings necessary to implement and obtain Final Judgment.

15. Invalid without Court Approval. If the Court does not approve the Settlement or does not enter judgment as provided for in this Settlement or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or, except as otherwise set forth herein, if one or more of the terms of the Settlement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within ten (10) days

of written notice thereof to elect to terminate the Settlement, in which case the Settlement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement. In the event this Agreement is not approved by the Court, it shall be deemed null and void, of no force and effect, and of no probative or evidentiary value, and the Parties hereto represent, warrant, and covenant that it will not be used or referred to for any purpose whatsoever. In the event that the Agreement does not become final for any reason, this Agreement shall be null and void and any order entered by the Court in furtherance thereof shall be treated as void ab initio. In such a case, the Parties shall return to the status quo as if they had not entered into this Agreement.

16. Non-Admission of Wrongdoing. The Parties agree that this Agreement does not constitute an admission by Defendants or any Released Party, of any of the matters alleged in the Lawsuit or of any violation by any of them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Plaintiff, Defendants or the Released Parties. Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the pendency of the Lawsuit, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

17. Waiver and Amendment. The Parties may not waive, amend, or modify any provision of this Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Agreement will not constitute a waiver of any other provision.

18. Covenants and Representations. Plaintiff represents and warrants he has not assigned or transferred or purported to assign or transfer, to any person or entity, any claim, right, liability, demand, obligation, expense, action, or causes, or portion thereof, or interest therein, which is or may be subject to this Settlement. Plaintiff acknowledges he has read this Settlement, fully understands his rights, privileges, and duties under the Settlement, and enters into this Settlement freely and voluntarily, and without duress. Plaintiff further acknowledges he had the opportunity to consult with his attorney to explain the terms of this Settlement and the consequences of signing this Settlement.

19. Termination of Settlement. If the Court does not approve the Settlement or does not enter judgment as provided for in this Settlement or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or, except as otherwise set forth herein, if one or more of the terms of the Settlement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within ten (10) days of written notice thereof to elect to terminate the Settlement, in which case the Settlement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement.

20. **Enforcement.** The Parties agree that following entry of the Final Judgment, this Agreement shall be enforceable by the Court and the Court shall retain exclusive and continuing jurisdiction of the Lawsuit over all parties and the Aggrieved Employees to interpret and enforce the terms, conditions, and obligations of the Agreement pursuant to California Code of Civil Procedure section 664.6. In the event that one or more of the Parties to this Settlement institutes any legal action or other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees incurred in connection with any enforcement actions.

21. **Costs and Fees.** The Parties shall each bear their own costs, attorneys' fees, expert fees, mediator fees, and other fees incurred in connection with this Settlement, the Action and Plaintiff's claims, except as otherwise set forth specifically herein.

22. **Entire Agreement.** This Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts and writings prior to the date hereof relating to the subject matters hereof. Any representation, promise or agreement not specifically included in this Agreement shall not be binding upon or enforceable against either Party. This is a fully integrated agreement. No other promises or agreements shall be binding or shall modify this Agreement unless in writing and signed by the Parties.

23. **Severability.** If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Agreement that can be given effect without the invalid provisions or application, and to this end, the provisions of this Agreement are declared to be severable. Notwithstanding the foregoing, no portion of any release contained herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the applicable Released Party.

24. **No Construction Against the Drafter.** Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party on the basis that the Party was the drafter.

25. **Choice of Law.** This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California without regard to principles of conflict of laws.

26. **Counterparts.** This Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically. All executed counterparts and each of them, including electronic signatures (e.g., DocuSign), facsimiles, and scanned copies of the signature pages, will be deemed to be one and the same instrument.

27. **Cooperation.** Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Agreement.

June 5
Dated: ~~May~~ __, 2023

Arturo Vera Lopez
Arturo Vera Lopez (Jun 5, 2023 19:28 PDT)

Plaintiff ARTURO VERA LOPEZ

Dated: ~~May~~ __, 2023
June 2, 2023

Mitsugu Mori
Defendant GREEN VALLEY LANDSCAPE, INC.

By: Mitsugu Mori
Its: CEO

Dated: ~~May~~ __, 2023
June 2, 2023

Mitsugu Mori
Defendant MITSUGU MORI, an Individual

APPROVED AS TO FORM:

June
Dated: ~~May~~ 5, 2023

MESSRELIAN LAW INC.

By: Harout Messrelian
Maralle Messrelian
Attorneys for Plaintiff ARTURO VERA LOPEZ, and
Aggrieved Employees

June
Dated: ~~May~~ 2, 2023

NOLAND, HAMERLY, ETIENNE & HOSS

By: Sharilyn R. Payne
Sharilyn R. Payne
Attorneys for Defendants GREEN VALLEY
LANDSCAPE, INC., MITSUGU MORI

EXHIBIT A



MESSRELIAN LAW
ATTORNEYS AT LAW

44-244-107-15

500 N. Central Avenue, Suite 840
Glendale, California 91203
Tel: (818) 484-6531
Fax: (818) 956-1983

VIA ELECTRONIC FILING

March 30, 2022

California Labor & Workforce Development Agency (LWDA)
Attn. PAGA Administrator
800 Capitol Mall, MIC-55
Sacramento, California 95814

VIA U.S. CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

GREEN VALLEY LANDSCAPE, INC.
MITSUGU MORI
1394 ORD GROVE AVE.
SEASIDE, CA 93955

GREEN VALLEY LANDSCAPE, INC.
MITSUGU MORI
1177 SAN PABLO AVE.
SEASIDE, CA 93955

ARTURO VERA LOPEZ v. GREEN VALLEY LANDSCAPE, INC.; MITSUGU MORI

RE: PRIVATE ATTORNEYS GENERAL ACT

To Whom It May Concern:

Please be informed that our client, Mr. Arturo Vera Lopez (hereinafter "our client" or "Mr. Lopez") seeks penalties on behalf of the State of California and all current and former non-exempt or hourly paid California employees ("aggrieved employees") who worked for GREEN VALLEY LANDSCAPE, INC. and MITSUGU MORI (hereinafter collectively referred to as "GREEN VALLEY") at any of their California locations during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 ("PAGA"). The purpose of this letter is to comply with the statutory requirements of California Labor Code section 2699.3 and shall constitute notice of the same. Individual MITSUGU MORI is being included in this PAGA notice pursuant to Labor Code Section 558.1 in that he was and is the owner/managing agent of GREEN VALLEY LANDSCAPE, INC., was involved in the day-to-day operations of the business and thus controlled the wages, hours, and working conditions of Mr. Lopez and other hourly, non-exempt employees.

Mr. Lopez started working for GREEN VALLEY over a decade ago. Mr. Lopez was classified as an hourly, non-exempt employee and was an assistant to the landscapers. Mr. Lopez is no longer employed at GREEN VALLEY. Mr. Lopez's typical schedule involved 6 days per week.



MESSRELAN LAW
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Fax: (818) 956-1983

It is our position that GREEN VALLEY has violated the following Labor Code Sections against Mr. Lopez and other similarly situated aggrieved employees:

GREEN VALLEY did not provide our client and other aggrieved employees with compensation for all hours worked and did not pay our client and others the minimum wages to which they were entitled for work performed pursuant to California Labor Code sections 1194, 1197 and 1197.1. This is so because GREEN VALLEY had a policy of rounding down the hours worked by Mr. Lopez and other aggrieved employees which translated to Mr. Lopez and others not being paid for all hours worked, including minimum wages. In addition, and to the extent Mr. Lopez and others' meal breaks were interrupted and they had to work through meal periods, that time was "off the clock" and was not compensated in violation of California's minimum wage laws. Furthermore, Mr. Lopez and others were not paid for "travel time" and while they were still under the control of the employer. In other words, after Mr. Lopez and others would clock out for the day, they would still have to ride back to the main yard while under the control of the employer. This ride would take 20-30 minutes, however, Mr. Lopez and others were not compensated for this time whatsoever (which would also be considered overtime since it would be past the 8th hour worked).

Furthermore, GREEN VALLEY was subject to the prevailing wage laws of the State of California pursuant to Labor Code § 1771, regarding work undertaken on public construction projects. Under Labor Code § 1771, the only legal wage which may be paid to workers on public works projects is the prevailing wage. GREEN VALLEY compensated our client and other similarly situated aggrieved employees for their labor on public improvement, or public works construction projects, at a rate of pay below the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and less than the general prevailing rate of per diem wages for holiday and overtime work.

GREEN VALLEY was subject to the prevailing wage laws of the State of California pursuant to Labor Code § 1774, regarding work undertaken on public construction projects. GREEN VALLEY violated Labor Code § 1774, because it paid its employees, including our client, less than the specific prevailing rates of wages to all workmen employed in the execution of the contract of the projects. Mr. Lopez and others similarly situated worked on public works projects, especially for the State of California.

Due to the above "off the clock" hours, GREEN VALLEY also violated Labor Code § 510 because it failed to pay our client and other aggrieved employees the correct amount of overtime, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Mr. Lopez's and other aggrieved employees' actual work hours entitled them to overtime compensation, however, GREEN VALLEY did not compensate its hourly, non-exempt employees with the correct amount of overtime, including for travel time, and did not include bonuses/incentive pay in calculating the regular rate of pay for purposes of deciphering the overtime rate of pay.

GREEN VALLEY also violated Labor Code § 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 4 because it failed to provide our client and others with 10-minute



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rest periods for every four hours of work, or majority portion thereof, throughout their employment. GREEN VALLEY did not completely relieve our client and others of all duty during said rest periods. GREEN VALLEY did not pay to our client and others one additional hour of pay at our client's regular rate of compensation for each workday that one or more statutory rest periods was not provided. It was not part of the company policy for employees such as Mr. Lopez and others to consistently take uninterrupted rest breaks every 4 hours worked. As such, the culture at GREEN VALLEY did not lend itself to the employees consistently receiving statutory rest breaks wherein they were relieved of all work duties. As such, the environment at GREEN VALLEY was not conducive to receiving statutory rest breaks under California law and timely, statutory rest breaks were not authorized or enforced.

GREEN VALLEY violated Labor Code §§ 512 and 226.7 along with Industrial Welfare Commission Wage Order no. 4 because it failed to provide hourly, non-exempt employees, including Mr. Lopez and others, the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. GREEN VALLEY did not completely relieve employees of all duty during said meal periods. GREEN VALLEY did not pay to Mr. Lopez and its hourly, non-exempt employees one additional hour of pay at their regular rate of compensation for each workday that one or more statutory meal periods was not provided. Like the rest breaks, consistently receiving a timely, uninterrupted thirty-minute uninterrupted meal break was not part of the company culture and was not enforced by GREEN VALLEY. There were instances wherein Mr. Lopez would not receive his meal period before the 5th hour worked or instances wherein his meal periods would be short or interrupted by work-related tasks. As such, it was the normal practice and custom of GREEN VALLEY not to consistently authorize, permit, and enforce timely, uninterrupted statutory meal periods. As such, Mr. Lopez and others would have to deal with late, short, or interrupted meal periods.

Furthermore, during the relevant time period, and due to the labor code violations cited above, GREEN VALLEY failed to pay Mr. Lopez and others all wages due to them within any time period specified by California Labor Code section 204. GREEN VALLEY was also in violation of California Labor Code section 226(a), by failing to include pertinent information on the wage statements, including but not limited to, the full and correct name of the legal employer along with the employer's address, all hours worked (including "off the clock" hours and overtime), all applicable hourly rates, gross wages earned, net wages earned, the correct start and end time of the pay period, all deductions, the employee's identifying information, and premium pay for the missed meal and rest breaks. As such, GREEN VALLEY did not provide our client and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

During the relevant time period, GREEN VALLEY also failed to keep accurate and complete payroll records showing the actual hours worked per day and the wages paid to Mr. Lopez and others pursuant to California Labor Code sections 1174(d).

GREEN VALLEY also violated Labor Code § 203 because it willfully failed to pay Mr. Lopez and other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation.



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These earned but unpaid wages include payment for all hours worked (including the minimum wage), overtime compensation, and premium pay for missed meal and rest breaks.

Also, during the relevant time period, Mr. Lopez and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by GREEN VALLEY. These costs include, but are not limited to, uniforms. Accordingly, GREEN VALLEY was in violation of California Labor Code sections 2800 and 2802.

Furthermore, we believe your company has also violated Labor Code Section 558 and has engaged in business practices which violate Business and Professions Code Section 17200.

Moreover, Mr. Lopez would have individual claims for discrimination in violation of the Fair Employment and Housing Act (FEHA), failure to accommodate/engage in the interactive process under FEHA, and wrongful termination in violation of public policy in that Mr. Lopez was terminated because he contracted covid-19 and was not able to work for a period of time. In fact, the company was unequivocally aware of Mr. Lopez's status as covid-positive because Mr. Lopez sent the test results to management. Once Mr. Lopez recovered, he was informed by the company that there was "no more work" for him and that he needed to find another job. Furthermore, Mr. Lopez would have causes of action against the company due to an unsafe and unhealth work environment under Labor Code Section 6300 et seq in that the owner of the company would force the employees to engage in physical fights against one another, causing Mr. Lopez and others to sustain injuries. Mr. Lopez would also have causes of action for negligent infliction of emotional distress and negligent infliction of emotional distress.

Each of the aforementioned violations, except the violations for inaccurate pay statements under Labor Code section 226(a), is among the enumerated serious violations set forth in Labor Code § 2699.5, for which there is no statutory right to cure.

Please take notice that, based upon the above-mentioned violations, and in addition to the penalties provided by those specific sections themselves, Mr. Lopez also intends to seek penalties under the following Labor Code sections which themselves are inviolable but provide for recovery of penalties for violating one or more of the above-mentioned Labor Code sections: Labor Code §§ 558, 226.3, 1197.1.

Should your agency choose not to pursue this matter, this law office intends to vigorously prosecute the aforementioned Labor Code violations on its behalf and vindicate the rights of all employees who have been subjected to these same Labor Code violations by GREEN VALLEY.

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If you have any questions or require additional information, please do not hesitate to contact us.
Thank you in advance for your attention to this matter.

Very Truly Yours,

Harout Messrelian, Esq.

EXHIBIT B
NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS

Arturo Vera Lopez v. Green Valley Landscape, et al.
(Monterey County Superior Court, Case No. 22CV003751)

I. NOTICE OF PAGA SETTLEMENT

The Monterey County Superior Court (the “Court”) has approved a settlement in the lawsuit named above and filed by Arturo Vera Lopez (“Plaintiff”) on behalf of himself, the State of California, and all other “aggrieved employees” against Green Valley Landscape, Inc. and Mitsugu Mori (“Defendants”).

In this lawsuit, Plaintiff alleges that Defendants violated the California Labor Code by failing to: (1) compensate for all hours worked; (2) pay minimum wages; (3) pay overtime compensation; (4) provide accurate itemized wage statements; (5) pay wages when employment ends; (6) pay wages owed every pay period; (7) give rest breaks; (8) give meal breaks; (9) reimburse for business expenses. Plaintiff is solely seeking civil penalties on behalf of the California Labor and Workforce Development Agency (“LWDA”) and other aggrieved employees under the Private Attorneys General Act (“PAGA”).

Defendants deny these allegations. Defendants maintain that they were in compliance with the California Labor Code at all times and entered into the Settlement with no admission of liability and solely for the purposes of compromising and settling the action to avoid the cost and operational burden of continued litigation.

The Court has not made a determination about Plaintiff’s allegations. This Notice is not to be understood as a statement of any opinion by the Court as to the merits of the claim. You are receiving this Notice because you are in the group of employees referred to as the “Aggrieved Employees” defined as: All non-exempt employees who are or were employed by Defendants within the State of California from March 30, 2021 through March 31, 2023.

II. CALCULATION OF INDIVIDUAL PAGA PAYMENT

Pursuant to the terms of the Settlement Agreement, your individual PAGA payment is [CheckAmount].

Each individual PAGA payment is based on the number pay periods worked by each Aggrieved Employee in the PAGA Period divided by the total number of pay periods worked by all Aggrieved Employees. “PAGA Period” refers to the time period from March 30, 2021 through March 31, 2023.

III. RELEASE

The Court has approved the parties’ Settlement Agreement (“Settlement”). By operation of the Settlement’s terms, the LWDA and the Aggrieved Employees, including Plaintiff, fully release and forever discharge the Released Parties from any and all Released Claims. As a result of this release, Aggrieved Employees will be unable to bring a claim under, or recover in any other claim brought under, the California Private Attorneys General Act, California Labor Code §§ 2698 *et seq.*, for any violations of the Released Claims that took place during the PAGA Period.

“Released Parties” means Defendants and each of their past or present divisions, d/b/a’s, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and its respective successors and predecessors in interest, subsidiaries, affiliates, parent companies and attorneys.

“Released Claims” means all claims, rights, demands, liabilities and causes of actions that are alleged, or reasonably could have been alleged based on the facts and claims asserted in the lawsuit and claims stated expressly or by implication in the notice filed with the LWDA, including any and all claims under the California Private Attorneys General Act of 2004, which include, but are not limited to: violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 232, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802, 6400, 6401, 6402, 6403, 6404 via 2698 and 2699, and the California Industrial Welfare Commission Wage Order, which may have arisen during the PAGA Period.

IV. SETTLEMENT ADMINISTRATOR

You may call the Settlement Administrator, ILYM Group, Inc., toll free at 1(XXX) XXX-XXXX with any questions.

Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to the Controller of the State of California within thirty (30) calendar days of their expiration, to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, for the benefit of those Aggrieved Employees who did not cash their checks, until such time that they claim their property. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE