

ADDENDUM TO CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This August 20, 2024 ADDENDUM supplements and amends the Class Action and PAGA Settlement Agreement (“Settlement Agreement”) between Plaintiff Juan Manuel Nino Rico and Defendants FMA Landscape Services, Inc. and Miguel Medina (“Defendants”), and is annexed to and forms part of the Settlement Agreement for all purposes. When the terms of this Addendum and the Settlement Agreement are in conflict, this Addendum shall govern and supersede the terms of the Settlement Agreement.

Section 4.4.3 of the Settlement Agreement is hereby amended to read as follows:

For any Class Member whose Individual Class Payment checks or Individual PAGA Payment checks are uncashed and cancelled after the void date, all funds represented by such uncashed checks from the distribution after the First and Second Installment shall be added back into the NSA and distributed pro rata to the Participating Class Members with the next distribution. Subject to Court approval, for any Class Member whose Individual Class Payment checks or Individual PAGA Payment Checks are uncashed and cancelled after the void date, all funds represented by such uncashed check from the distribution after the Third Installment shall be transmitted by the Administrator to the East Bay Community Law Center as proposed *cy pres* beneficiary.

Exhibit A to the Settlement Agreement is replaced with Exhibit A hereto.

AGREED:

Date: 08 / 29 / 2024

Juan Manuel Niño rico

Juan Manuel Nino Rico

Date: Aug 28, 2024

Miguel Medina

FMA Landscape Services, Inc.

By: Miguel Medina _____

Its: Owner _____

Date: Aug 28, 2024

Miguel Medina

Miguel Medina

EXHIBIT A

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT
AND HEARING DATE FOR FINAL COURT APPROVAL**

Juan Manuel Nino Rico v. F M A Landscape Services, Inc.

Superior Court of the State of California, County of Santa Clara

Case No. 23CV409762

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against F M A Landscape Services, Inc. and Miguel Medina (together “FMA” or “Defendants”) for alleged wage and hour violations. The Action is brought by Juan Manuel Nino Rico (“Plaintiff”) and seeks payment of (1) unpaid wages, statutory damages, meal period and/or rest break premiums, penalties for pay stub and wage violations, interest, and attorneys’ fees on behalf of a class of non-exempt/hourly employees of FMA (“Class Members”) during the Class Period (July 16, 2018 through December 31, 2023, or the date of the Preliminary Approval, whichever is sooner); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all non-exempt/hourly employees of FMA, who worked in California during the PAGA Period (November 6, 2021 through December 31, 2023, or the date of the Preliminary Approval, whichever is sooner) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

[CLASS MEMBER NAME] [ID/CONTROL NUMBER]

Two Parts	Workweeks Worked During Class Period (Class Member); Pay Periods Worked During PAGA Period (Aggrieved Employee)	Your Estimated Share
Class Member	INSERT (During Class Period)	\$INSERT (Individual Class Payment)
Aggrieved Employee	INSERT (During PAGA Period)	\$INSERT (Individual PAGA Payment)

Based on Defendants’ records, and the Parties’ current assumptions, your Individual Class Payment (less withholdings), your individual Class Payment and your Individual PAGA Payment are shown in the chart above, along with the workweeks and pay periods worked you are credited

with working during the Class Period and PAGA Period, respectively, according to Defendants' records. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendants' records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.) If you believe you worked more workweeks or pay periods during either of the relevant periods, you can submit a challenge by the deadline. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members to give up their rights to assert certain claims against Defendants.

If you worked for Defendants during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING & PARTICIPATE IN THE SETTLEMENT	If you want to receive your settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described below.
OPT-OUT (EXCLUDE YOURSELF) DEADLINE: 	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue PAGA Released Claims. See Section 10 of this Notice.
OBJECT DEADLINE: 	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 3 of this Notice.

DISPUTE YOUR HOURS OR PAY PERIODS WORKED DEADLINE: 	If you believe that your number of hours or pay periods worked listed above is incorrect, you may challenge it. The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many hours you worked during the Class Period. The number you are credited are shown in the chart on the first page, and are based on Defendant's records. If you disagree with either of these numbers, you must challenge it by the deadline. See Section 4 of this Notice.
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Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT'S NOT REQUIRED	
DATE: TIME: A.M. / P.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former FMA employees. The Action accuses Defendants of violating California labor laws by failing to pay minimum wages, failure to pay overtime wages, meal and rest period premiums, and timely wages, meal periods, rest breaks and accurate itemized wage statements, among other things. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA").

Defendants strongly denies liability, violating any laws or failing to pay any wages, and contends it complied with all applicable laws.

Plaintiff is represented by attorneys in the Action ("Class Counsel"). See Section 9 below for their contact information.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiff are correct on the merits. In the meantime, Plaintiff and Defendants hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount

considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendants Will Pay \$360,000.00 as the Gross Settlement Amount (“Gross Settlement”). Defendants have agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement in three installment payments. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendants will fund the Gross Settlement as follows: First Installment in the amount of \$140,000.00 by the later of December 1, 2024 or 30 days of Final Approval, a Second Installment in the amount of \$110,000.00 within 180 days after payment of the First Installment, and a Third Installment in the amount of \$110,000.00 within 300 days after payment of the First Installment. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. \$120,000.00 (one-third of the Gross Settlement) to Class Counsel for attorneys’ fees and up to \$10,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. \$10,000.00 to Plaintiff as a Class Representative Award for filing each Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff’s Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$12,000.00 to the Administrator for services administering the Settlement.
 - D. \$20,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their share of Pay Periods Worked during the PAGA Period.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their workweeks during the Class Period.
4. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking the Court to approve an allocation of twenty percent (20%) of each Individual Class Payment to taxable wages (“Wage Portion”) and eighty percent (80%) to unreimbursed expenses, penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately pay employer payroll taxes it owes on the Wage Portion.) The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendants have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). For the first and second checks you receive, if you don’t cash them by the void date, the funds will go back into the NSA and redistributed pro rata as part of the next distribution. For the third check you receive, if you don’t cash it by the void date your check will be automatically cancelled, and the monies will be ~~deposited with the California Controller's Unclaimed Property Fund in your name, sent to the East Bay Community Law Center, which is a charitable organization that provides free legal services to the needy in the San Francisco Bay Area.~~

~~If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.~~

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than the Response Deadline that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible

for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendant based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.
8. Administrator. The Court has appointed a neutral company, Phoenix Class Action Administration Solutions (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over workweeks and pay periods worked, mail and re- mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and Defendants have fully funded the entire Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for wages based on the facts alleged in the Action for the duration of the Class Period and PAGA Period, which are resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, including but not limited to claims for unpaid minimum wages; failure to pay overtime; failure to provide meal premiums and/or unpaid meal period premiums; failure to authorize and permit rest breaks and/or unpaid rest break premiums; failure to timely pay final wages; failure to provide complete wage statements; violation of relevant and/or applicable sections of the relevant Industrial Welfare Commission Wage Order(s); and unfair competition under Business & Professions Code sections 17200, *et seq.* arising from violations of the above the Labor Code sections (the “Released Class Claims”). The operative release period for the Released Class Claims is the Class Period. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

10. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and

Defendants have paid the entire Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against Defendant, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendant or its related entities based on facts alleged in the Operative Complaint within the PAGA Period and resolved by this Settlement.

The Aggrieved Employees' Releases are as follows: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged in the Complaint and Plaintiff's PAGA Notice, or reasonably could have been alleged based on the facts stated in the Complaint and the PAGA Notices, including but not limited to PAGA claims premised on violation of Labor Code sections 201-203, 204, 216, 221-224, 226, 226.7, 450, 510, 512, 514, 1174, 1194, 1197, 1198, 1199, 2441, 2699, 2810.5, 2802, and applicable sections of the relevant Industrial Welfare Commission Wage Order(s) (the "Released PAGA Claims"). The operative release period for the Released PAGA Claims is the PAGA Period.

4. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?
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1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member during the Class Period.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$5,000.00 by the total number of Pay Periods Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Pay Periods Worked by each individual Aggrieved Employee during the PAGA Period.
3. Workweeks Worked and Pay Period Challenges. The number of workweeks you worked during the Class Period and the number of pay period you worked during the PAGA Period, as recorded in Defendants' records, are stated in the first page of this Notice. You have until [INSERT DATE] ("Response Deadline") to challenge the number of hours or pay periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendants' calculation of hours and pay periods based on Defendant's records as accurate unless you send copies of records containing contrary

information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendants' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members and Aggrieved Employees. The Administrator will send, by U.S. mail, three checks to every Participating Class Member (i.e., every Class Member who doesn't opt-out) and Aggrieved Employee, with the first check being issued after the First Installment Payment, the second check being issued after the Second Installment Payment, and the final check being issued after the Third Installment Payment. The checks will combine the Individual Class Payment and the Individual PAGA Payment.
2. Aggrieved Employees Only. If you opted out of the Class settlement, but qualify as an Aggrieved Employee, then the Administrator will send, by U.S. mail, two Individual PAGA Payment checks to every Aggrieved Employee, including those who opt out of the Class Settlement.

Your checks will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Actions as Rico. v. F M A Landscape Services, et al., and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **Send your request to be excluded to the Administrator by INSERT DATE (the "Response Deadline"), or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

You may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing at your expense, either in person, telephonically, or through an attorney, provided you notify the Court of your intention to do so. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must (a) clearly identify the case name and number (Rico v. F M A Landscape Services, Inc, et al., Case Number 23CV409762), (b) be submitted to the Court either by mailing the objection to: Clerk of the Court, Superior Court of California, County of Santa Clara, 191 N. 1st Street, San Jose, California 95113, or by filing in person at the same location; (c) also be mailed to the law firm identified in Section 9 below, and (d)

be filed or postmarked on or before [INSERT DATE].

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [INSERT DATE] at [INSERT TIME] in Department 19 of the Santa Clara County Superior Court, located at 191 N. First Street, San Jose, California. At the Final Approval Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually. Check the Court's website for the most current information.

Class members may appear at the final approval hearing in person or remotely using the Microsoft Teams link for Department 19 (Afternoon Session). Instructions for appearing remotely are provided at: https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members who wish to appear remotely are encouraged to contact class counsel at least three days before the hearing if possible, so that potential technology or audibility issues can be avoided or minimized.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Court's website or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the detailed Agreement, which is on file with the Clerk of the Court. The pleadings and other records in this litigation, including the Agreement, may be examined (a) online on the Superior Court of California, County of Santa Clara's Electronic Filing and Service Website at www.sccfiling.org, or (b) in person at Records, Superior Court of California, County of Santa Clara, 191 N. First St., San Jose, California, 95113, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays and closures, or you may contact Class Counsel, Defense Counsel or the Settlement Administrator, whose contact information is set forth below.

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIMS PROCESS.

The contact information for Class Counsel, Defense Counsel and the Settlement Administrator are below:

Class Counsel:

J. Kirk Donnelly
Law Offices of J. Kirk Donnelly, APC
2173 Salk Ave., Ste. 250
Carlsbad CA 92008
760-209-5894
kdonnelly@jkd-law.com

Defense Counsel:

Michael B. Sachs
505 Montgomery Street, 13th Floor
San Francisco, California, 94111
415-984-8530
MSachs@ClarkHill.com

Settlement Administrator:

XX
Email Address
Mailing Address
Telephone Number
Fax Number
URL case website

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.