

JOINT STIPULATION AND SETTLEMENT AGREEMENT

This Joint Stipulation and Settlement Agreement (“Settlement” or “Agreement” or “Settlement Agreement”) is made by and between plaintiffs Rodolfo Zarate (“Zarate”) and Julio Lopez (“Lopez”, and collectively with plaintiff Zarate, “Plaintiffs”) on the one hand; and defendant Clark and White Landscape (“C&W” or “Defendant” and, collectively with “Plaintiffs”, the “Parties”), on the other hand. The Agreement pertains to the lawsuit filed in the Superior Court of the State of California, County of Los Angeles County, which is defined below in section I(A).

I. DEFINITIONS

A. “Action” means the following lawsuit entitled: *Zarate, et al. v. Clark and White Landscape* filed in Los Angeles County Superior Court, Case No. 23SMCV01977.

B. “Agreement” means this Joint Stipulation and Settlement Agreement, and its exhibits, attached hereto and incorporated herein, including all subsequent amendments agreed to in writing by the Parties and any exhibits to such amendments.

C. “Aggrieved Employee(s)” means all current and former non-exempt, hourly-paid employees employed by Defendant in the State of California during the Settlement Period.

D. “Aggrieved Employee List” means a complete list of all Aggrieved Employees that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator within seven (7) calendar days after the Effective Date. The Aggrieved Employee List will include each Aggrieved Employee’s: a) full name; b) last known address; c) last known telephone number; d) his or her full Social Security Number; and e) his or her dates of employment as an hourly-paid, non-exempt employee for Defendant in California during the Settlement Period.

E. “Court” means the Superior Court of the State of California for the County of Los Angeles.

F. “Defendant” or “C&W” means Clark and White Landscape, a California corporation.

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1 **G. “Effective Date”** means the later of: (a) the date the Court signs an Order granting
2 approval of this Settlement and Judgment; (b) if any objections or motions to intervene are filed
3 prior to the date the Court signs an Order granting approval of this Settlement, sixty (60) days
4 from the later of the date the Court signs an order granting approval of the Settlement or the date
5 the Court enters final judgment so long as no appeal is filed within that time frame; and (c) to the
6 extent any appeals have been filed, the date on which they have been resolved or exhausted.

7 **H. “Gross Settlement Amount”** means the settlement amount of One Hundred
8 Seven Thousand Five Hundred Dollars and Zero Cents (\$107,500.00), as the same may be
9 escalated pursuant to Paragraph III(L)(2) of this Agreement, which Defendant shall pay to resolve
10 the Action. The Gross Settlement Amount includes: (a) payment to the LWDA; (b) all Individual
11 Settlement Payments to Aggrieved Employees; (c) Plaintiffs’ Counsel’s Attorneys’ Fees and
12 Costs; (d) Plaintiffs’ Enhancement Payments; and (e) Settlement Administration Costs.

13 **I. “Individual Settlement Payment(s)”** means the *pro rata* amount payable to each
14 Aggrieved Employee from the 25% portion of the Net Settlement Amount allocated to payments
15 to the Aggrieved Employees. The agreed upon formula for calculation of Individual Settlement
16 Payments is set forth in section III(F) below.

17 **J. “LWDA”** means the California Labor and Workforce Department Agency.

18 **K. “Net Settlement Amount”** means the total amount of money that will be paid to
19 the LWDA and the Aggrieved Employees collectively after deductions, if approved by the Court,
20 for: (a) Settlement Administration Costs; (b) Plaintiffs’ Counsel’s Attorneys’ Fees; (c) Plaintiffs’
21 Counsel’s Attorneys’ Costs; and (d) Plaintiffs’ Enhancement Payments.

22 **L. “Operative Complaint” or “First Amended Complaint”** means, collectively,
23 the First Amended Complaint filed on March 4, 2024.

24 **M. “PAGA”** means the Private Attorneys General Act of 2004 as codified in
25 California Labor Code section 2698, *et seq.*

26 **N. “PAGA Payment Letter”** means a letter that the Settlement Administrator will
27 send to each Aggrieved Employee with his or her Individual Settlement Payment, which explains
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the reason for the Individual Settlement Payment, substantially in the form attached hereto as **Exhibit 1**, excluding any revisions by the Court.

O. “PAGA Period” means the period from February 28, 2022 through November 16, 2023.

P. “Pay Period” means a pay period that an Aggrieved Employee was employed by Defendant in a non-exempt, hourly-paid position during the PAGA Period, based on hire dates, re-hire dates, and termination dates.

Q. “Parties” means Plaintiffs and Defendant, collectively.

R. “Plaintiffs” or “Named Plaintiffs” shall refer to Rodolfo Zarate and Julio Lopez.

S. “Plaintiffs’ Counsel” means collectively: Jasmin K. Gill and Sacha Pomares of J. Gill Law Group, P.C.

T. “Plaintiffs’ Counsel’s Attorneys’ Costs” means the amount not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00), unless escalated pursuant to section III(L)(2), according to proof and subject to approval by the Court. Plaintiffs’ Counsel’s Attorneys’ costs will be paid from, and not in addition to, the Gross Settlement Amount. The amount of Plaintiffs’ Counsel’s Attorneys’ Costs shall include all past and future attorneys’ costs to Plaintiffs’ Counsel—including, without limitation, all costs expended by Plaintiffs’ Counsel in defending the Settlement and securing approval of the Settlement (including any appeals) unless, in the event of a material breach of this Agreement by Defendants, Plaintiffs are required to move the Court for enforcement of this Agreement. Should the Court approve Plaintiffs’ Counsel’s Attorneys’ Fees and Costs in an amount less than the amounts provided herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount. Defendant will not oppose an award of attorneys’ costs.

U. “Plaintiffs’ Counsel’s Attorneys’ Fees” means the amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount, according to proof and subject to approval by the Court. Plaintiffs’ Counsel’s Attorneys’ Fees will be paid from, and not in addition to, the Gross Settlement Amount. The amount of Plaintiffs’ Counsel’s Attorneys’ Fees shall include all

1 past and future attorneys' fees to Plaintiffs' Counsel—including, without limitation, all time
2 expended by Plaintiffs' Counsel in defending the Settlement and securing approval of the
3 Settlement (including any appeals) unless, in the event of a material breach of this Agreement by
4 Defendant, Plaintiffs are required to move the Court for enforcement of this Agreement. Should
5 the Court approve Plaintiffs' Counsel's Attorneys' Fees in an amount less than the amounts
6 provided herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.
7 Defendant will not oppose an award of attorneys' fees.

8 **V. "Released Parties"** shall refer to Defendant and each of its respective past,
9 present and future agents, employees, servants, officers, directors, partners, trustees,
10 representatives, shareholders, stockholders, attorneys, parents, subsidiaries, fictitious business
11 names, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns,
12 predecessors, successors, insurers, consultants, joint venturers, any actual or alleged joint
13 employers, affiliates, alter-egos, representatives, and affiliated organizations, and all of its
14 respective past, present and future employees, directors, officers, agents, attorneys, stockholders,
15 fiduciaries, parents, subsidiaries, successors, and assigns.

16 **W. "Settlement"** shall mean the settlement between the Parties that is memorialized
17 in this Agreement and subject to Court approval.

18 **X. "Settlement Administration Costs"** means the costs payable from the Gross
19 Settlement Amount to the Settlement Administrator for administering this Settlement. All
20 Settlement Administration Costs shall be paid from, and not in addition to, the Gross Settlement
21 Amount. The Settlement Administration Costs include, but are not limited to, the required tax
22 reporting on the Individual Settlement Payments, the issuing of appropriate tax forms, as needed,
23 confirming/auditing claims for payments for compliance with the Settlement, calculating and
24 distributing all payments to be made pursuant to the Settlement, and providing reports and
25 declarations. The Settlement Administration Costs are currently estimated to be no more than
26 \$2,950.00. If the actual amount of the Settlement Administration Costs is less than \$2,950.00,
27 the difference between \$2,950.00 and the actual Settlement Administration Costs shall be a part
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of the Net Settlement Amount. If the Settlement Administration Costs exceed \$2,950.00, then such excess will be paid solely from the Gross Settlement Amount and Defendants will not be responsible for paying any additional funds in order to pay these additional costs.

Y. “Settlement Administrator” means the Third-Party Administrator mutually agreed upon by the Parties and approved by the Court that will be responsible for the administration of the Settlement. The Parties will obtain a not-to-exceed quote from the mutually acceptable qualified settlement administrator for claims administration costs. The Settlement Administrator agreed upon by all parties is Phoenix Settlement Administrators.

Z. “Settlement Period” means the period from February 28, 2022 through November 16, 2023.

II. BACKGROUND

A. The PAGA Action. On February 28, 2023, plaintiff Zarate filed with the LWDA a notice under Labor Code section 2699.3 stating he intended to serve as a proxy of the LWDA to recover civil penalties for various Labor Code violations, which was later amended to include plaintiff Lopez, and shall hereinafter be referred to as the “PAGA Notice.” On May 4, 2023, plaintiff Zarate filed a PAGA representative action in the Superior Court of California for the County of Los Angeles, Case Number 23SMCV01977, seeking civil penalties on behalf of himself and Aggrieved Employees against Defendant for civil penalties under PAGA as alleged in the PAGA Notice. On March 4, 2024, Plaintiffs filed their First Amended Complaint, adding plaintiff Lopez as a named Plaintiff.

B. On February 28, 2023, plaintiff Zarate also filed a wage-and-hour class action complaint in the Superior Court of California for the County of Los Angeles, Case Number 23STCV04397 (the “Class Action”). As a part of this Settlement, and in light of exchanges of information and documents between the Parties’ regarding Defendant’s financial condition, the Parties agree to: (i) dismiss the Class Action without prejudice as to Plaintiff Zarate and the putative class; and (ii) cooperate with each other and the Court in providing all documents and

1 information necessary to achieve said dismissal of the Class Action without prejudice as to
2 Plaintiff Zarate and the putative class.

3 **C. Planned Mediation.** The Parties originally agreed to attend mediation on
4 November 16, 2023 with Hon. Jeff Winikow (Ret.). However, as the date approached and
5 additional documents and information were exchanged regarding Defendant's financial
6 condition, Defendant requested mediation to be cancelled on the basis that Defendant would not
7 be able to afford both the attorneys' fees and costs associated with preparing for and attending a
8 mediation *and* a settlement of the Action without the amount available for any settlement being
9 significantly diminished as a result of the attorneys' fees and costs associated with Defendant's
10 preparation for and attending a mediation session with Mr. Winikow.

11 **D. Informal Discovery.** As a part of informal discovery, Plaintiffs were provided
12 with, among other things: (1) a count of all pay periods worked by Aggrieved Employees during
13 the PAGA Period; (2) a sampling of time and payroll records for Aggrieved Employees; (3) hire
14 dates and termination dates for Aggrieved Employees; (4) exemplars of purported release
15 agreements; and (5) the personnel files and time and payroll records for Plaintiffs.

16 **E.** On December 1, 2023, after engaging in lengthy negotiations and settlement
17 discussions, which included the exchange of informal discovery and documents and information
18 regarding Aggrieved Employees' time and pay records and Defendant's financial condition, the
19 Parties reached a settlement to resolve the Action. Specifically, the Parties by and through their
20 respective counsel, agreed to settle the Action for the Gross Settlement Amount of One Hundred
21 Seven Thousand Five Hundred Dollars and Zero Cents (\$107,500), among other terms as detailed
22 in this Agreement. As part of the Settlement, the Parties agreed to stipulate to Plaintiff Zarate
23 being granted leave to file a First Amended Complaint adding Lopez as a named plaintiff to the
24 Action based on Plaintiffs' PAGA Notice, which was filed on March 4, 2024. The Parties agree
25 that whether or not the Court approves the Settlement in the Action, the operative complaint in
26 the Action shall be the First Amended Complaint.

F. Plaintiffs' Position as to Settlement. Plaintiffs' Counsel have conducted significant investigation of the law and facts relating to the claims asserted in the Action, and have concluded that that the Settlement set forth herein is fair, reasonable, adequate, and in the best interests of the LWDA and Aggrieved Employees, taking into account the sharply contested issues involved, the expense and time necessary to litigate the Action through trial and any appeals, the risks and costs of further litigation, the information learned through Defendant's financial disclosures regarding Defendant's ability to pay, the risk of an adverse outcome, the uncertainties of complex litigation, the information learned through informal discovery regarding Plaintiffs' allegations, and the substantial benefits to be received by Aggrieved Employees.

G. Defendant's Position as to Settlement. Defendant has concluded that, because of the substantial expense of defending against the Action, the length of time necessary to resolve the issues presented herein, the inconvenience involved, and the concomitant disruption to its business operations, it is in its best interests to accept the terms of this Agreement. Defendant denies each of the allegations and claims asserted against it in the Action. However, Defendant nevertheless desires to settle the Action for the purpose of avoiding the burden, expense and uncertainty of continuing litigation and for the purpose of putting to rest the controversies engendered by the Action.

III. TERMS OF SETTLEMENT

A. **All Terms Subject to Court Approval.** The Court has jurisdiction over the Parties and the subject matter of the Action. The Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the applicable statutes. This Agreement shall be submitted to the Court for approval and final judgment. After the Court has granted approval of the Settlement and entered judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment pursuant to California Rule of Court, rule 3.769, subdivision (h). If the Court fails to approve this Agreement for any reason, the Agreement shall be considered void *ab initio* and shall be of no force or effect whatsoever, and shall not be referred to or utilized for

any purpose whatsoever. The Agreement shall be submitted by Plaintiffs to the LWDA within the time limits prescribed by law.

B. Gross Settlement Amount. Defendant shall pay the Gross Settlement Amount of One Hundred Seven Thousand Five Hundred Dollars and Zero Cents (\$107,500.00) to settle this Action, unless escalated pursuant to section III(L)(2). The Gross Settlement Amount will be to satisfy all of Defendant's liabilities arising from the Settlement. No portion of the Gross Settlement Amount shall revert to Defendant. The total amount paid by Defendant shall not, in the aggregate, exceed the Gross Settlement Amount, except to the extent escalated pursuant to section III(L)(2) below.

C. Plaintiffs' Counsel's Attorneys' Fees and Costs. Plaintiffs' Counsel shall apply for, and Defendant shall not oppose, an award of Plaintiffs' Counsel's Attorneys' Fees and Costs. Plaintiffs' Counsel shall submit a declaration to the Court detailing the costs incurred and/or expected to be incurred in the Lawsuit. Plaintiffs' Counsel shall be solely responsible for the division and distribution of any and all court-approved Plaintiffs' Counsel's Attorneys' Fees and Costs. Should the Court approve Attorneys' Fees and Costs in an amount less than the amounts provided herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

D. Plaintiffs' Enhancement Payment. Plaintiffs Zarate and Lopez will request and apply for the Enhancement Payment(s) referred in Paragraph I(H). Specifically, Zarate will apply for a payment of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) and Lopez will apply for a payment of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00). The Enhancement Payment(s) shall be paid from, and not in addition to, the Gross Settlement Amount. Any amounts not awarded by the Court under this provision shall be included in the Net Settlement Amount. Defendant agrees not to oppose any such application which is consistent with this paragraph.

E. LWDA Payment. Subject to Court approval, the Parties agree that an amount equal to seventy-five percent (75%) of the Net Settlement Amount will be paid to the LWDA in settlement of all representative claims alleged by or on behalf of Plaintiffs and the Aggrieved

Employees. Should the Court grant Plaintiffs' Counsel's Attorneys' Fees and Costs, and Settlement Administration Costs, and should the Settlement not be escalated pursuant to section III(L)(2) of this Agreement, the amount paid to the LWDA will be \$20,193.75, and \$6,731.25 (25%) of the Net Settlement Amount will be available for Individual Settlement Payments to Aggrieved Employees.

F. Individual Settlement Payments. Subject to Court approval, the Parties agree that an amount equal to twenty-five percent (25%) of the Net Settlement Amount (the "Aggrieved Employee Portion") will be paid to the Aggrieved Employees in settlement of the PAGA Released Claims. Individual Settlement Payments will be calculated and apportioned from the Aggrieved Employee Portion based on the number of Pay Periods an Aggrieved Employee worked during the Settlement Period. The Settlement Administrator will determine the total number of Pay Periods worked by each Aggrieved Employee during the Settlement Period based on the data provided by Defendant in the Aggrieved Employee List and the aggregate number of Pay Periods worked by all Aggrieved Employees during the Settlement Period. To determine each Aggrieved Employee's Individual Settlement Payment, the Settlement Administrator will use the following formula: Individual Settlement Payment = (Aggrieved Employee's Pay Periods during the Settlement Period / Aggregate Number of Aggrieved Employees' Pay Periods during the Settlement Period) x (0.25 x Net Settlement Amount). Defendant agrees this formula is reasonable and that the payments are designed to provide a fair settlement to each Aggrieved Employee in light of the uncertainties regarding the penalties alleged to be owed and the calculation of such amounts.

G. Tax Treatment of Settlement Payments. All Individual Settlement Payments will be characterized as civil penalties, and IRS Forms 1099-MISC will be issued as necessary. The payment of Plaintiffs' Counsel's Attorneys' Fees and Costs will also be reported on IRS Forms 1099-MISC. The Settlement Administrator will issue all such forms.

H. Aggrieved Employees' Tax Liability. Other than the reporting requirements set forth in this Agreement, the Aggrieved Employees shall be responsible for the reporting and

1 payment of any federal, state, and/or local income or other tax or any other withholdings, if any,
2 on any of the payments made pursuant to this Agreement. Counsel for Plaintiffs and Defendant
3 make no representations, and it is understood and agreed that Counsel for Plaintiffs and
4 Defendant have made no representations, as to the taxability of any portions of the Individual
5 Settlement Payments to any Aggrieved Employee, the payment of any costs or an award of
6 attorney fees, or any payments to Plaintiffs. The PAGA Payment Letter attached hereto as
7 **Exhibit 1** will inform Aggrieved Employees of the opportunity to seek their own tax advice in
8 connection with their receipt of Individual Settlement Payments.

9 **I. Defendant's Tax Liability.** The Parties do not expect there to be any employer
10 side taxes arising from this Settlement because this a settlement of a representative action for
11 civil penalties. If it is determined that employer side taxes exist on the Gross Settlement Amount,
12 such taxes will be funded by the Gross Settlement Amount.

13 **J. Releases**

14 1) **PAGA Released Claims.** The claims settled, fully released and forever
15 discharged by the LWDA (to the fullest extent permitted by law) and the Aggrieved Employees,
16 including Plaintiffs, constitute any and all claims that are asserted in the factual allegations and
17 legal assertions made in the Action under PAGA (Labor Code section 2698, *et seq.*) including
18 all claims and causes of action that could have been asserted in the Action based on the factual
19 allegations and legal assertions alleged up through and specifically including the entire
20 Settlement Period, under PAGA, whether or not specifically delineated as a claim or cause of
21 action in the Action ("PAGA Released Claims"). The PAGA Released Claims include but are
22 not limited to those (a) alleged in any of Plaintiffs' notices provided to the LWDA, the Operative
23 Complaint in the Action, and any amended complaint in the Action, including claims that arise
24 out of the claims and facts alleged in the Action under PAGA, (b) any claims under PAGA which
25 could have reasonably been asserted under PAGA in the Action arising from the alleged facts
26 and/or primary rights alleged to have been invaded, and (c) any other claims under PAGA to the
27 extent that they that are premised upon or arise out of PAGA Released Claims for failure to pay
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1 all wages due, failure to provide minimum wages or pay for all hours worked, failure to pay
2 overtime compensation, failure to provide meal and/or rest periods, failure to pay proper meal or
3 rest period penalties, failure to keep accurate time records, failure to provide and maintain
4 accurate itemized wage statements, failure to keep accurate employee payroll records, failure to
5 timely pay wages due during or at separation of employment, failure to reimburse all business-
6 related expenses, failure to provide paid sick leave, and claims reasonably relating to the alleged
7 violations of California Labor Code sections 96(k), 98.6, 200-204, 206, 206.5, 210, 226, 226.3,
8 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197,
9 1197.1, 1197.5, 1198.5, 2699, 2802 and 2810.5, against the Released Parties; (d) to the extent
10 that they are premised upon or arise out of the PAGA Released Claims, Labor Code sections 216,
11 218.6 and 558. The release extends to all remedies under the PAGA for any of the PAGA
12 Released Claims and shall become effective only after the Effective Date and full payment by
13 Defendant to the Settlement Administrator.

14 2) Exclusions to the PAGA Released Claims. The PAGA Released Claims
15 expressly exclude all claims for damages, claims for vested benefits, wrongful termination,
16 unemployment insurance, disability, social security, workers' compensation, claims arising
17 under the Fair Employment and Housing Act and California Family Rights Act, any other claims
18 outside of the PAGA Released Claims of Aggrieved Employees, including Plaintiffs, arising
19 during the Settlement Period to the extent permitted by law, and the PAGA claims of Aggrieved
20 Employees, including Plaintiffs (and, to the extent permitted by law, the State of California)
21 arising outside of the Settlement Period.

22 3) Aggrieved Employees are bound by the Settlement. Because the Action
23 is pursuant to PAGA, the Parties agree that no Aggrieved Employee has the right to exclude
24 themselves from the Settlement. All Aggrieved Employees will be bound by this Settlement
25 Agreement, upon its approval by the Court, regardless of whether they negotiate their settlement
26 check.

27 4) Individual General Release. As of the Effective Date and only after full
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1 payment of the Gross Settlement Amount by Defendant to the Settlement Administrator, in
2 addition to releasing the PAGA Released Claims, Plaintiffs Zarate and Lopez make the additional
3 following General Release, which shall be referred to as "Plaintiffs Zarate and Lopez's General
4 Released Claims": Plaintiffs Zarate and Lopez fully and finally release the Released Parties from
5 all claims, demands, rights, liabilities and causes of action of every nature and description
6 whatsoever, known or unknown, asserted or that might have been asserted, whether in tort,
7 contract, or for violation of any state or federal statute, rule, law or regulation arising out of,
8 relating to, or in connection with any act or omission of the Released Parties through the date of
9 full execution of this Agreement in connection with Plaintiffs' employment with Defendant or
10 termination thereof, except for any and all other claims that may not be released as a matter of
11 law through this Agreement. To the extent of the General Release provided herein, Plaintiffs
12 stipulate and agree that upon the Effective Date and only after full payment of the Gross
13 Settlement Amount by Defendant to the Settlement Administrator, even if Plaintiffs Zarate and
14 Lopez discover facts in addition to or different from those that Plaintiffs Zarate and Lopez now
15 know or believe to be true with respect to the subject matter of Plaintiffs Zarate and Lopez's
16 General Released Claims, those claims will remain released and forever barred. Thus, Plaintiffs
17 Zarate and Lopez expressly waive and relinquish the provisions, rights and benefits of section
18 1542 of the California Civil Code, which reads:

19 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
20 **THAT THE CREDITOR OR RELEASING PARTY DOES NOT**
21 **KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT**
22 **THE TIME OF EXECUTING THE RELEASE AND THAT, IF**
23 **KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY**
24 **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR**
25 **OR RELEASED PARTY.**

26 Notwithstanding the foregoing, Plaintiffs Zarate and Lopez do not waive or release any
27 claim which cannot be waived or released by private agreement, nor do they waive or release any
28 rights of other employees as it pertains to this general release being provided only by Plaintiffs.
Further, Plaintiff Zarate's release of claims as an Aggrieved Employee, as well as his General
Release and Civil Code section 1542 waiver expressly excludes any release or waiver for any

1 and all claims that may be brought, have been brought, or could have been brought by Plaintiff
2 Zarate for wrongful termination, disability discrimination, retaliation, harassment, failure to
3 engage in the interactive process, failure to accommodate, failure to prevent harassment,
4 discrimination or retaliation, or under the California Fair Employment and Housing Act and/or
5 California Family Rights Act. Further, nothing in this Agreement shall prevent Plaintiffs Zarate
6 and Lopez from filing a charge or complaint with, or from participating in, an investigation or
7 proceeding conducted by the SEC, OSHA, EEOC, DFEH, NLRB or any other federal, state or
8 local agency charged with the enforcement of any employment or other applicable laws. Plaintiff
9 Lopez, however, understands that by signing this Agreement, Plaintiff Lopez waives the right to
10 recover any damages or to receive other relief in any claim or suit brought by or through the
11 EEOC, the DFEH or any other state or local deferral agency on Plaintiff Lopez's behalf to the
12 fullest extent permitted by law, but expressly excluding any monetary award or other relief
13 available from the SEC/OSHA, including an SEC/OSHA whistleblower award, or other awards
14 or relief that may not lawfully be waived.

15 (a) Release of ADEA Claims. The general release of claims by
16 Plaintiffs Zarate and Lopez in Section III.J.4 of this Agreement includes a release of any claim
17 Plaintiffs Zarate and Lopez may have under the federal Older Workers Benefit Protection Act
18 ("OWBPA") and/or the federal Age Discrimination In Employment Act of 1967 ("ADEA"). By
19 signing this Agreement, Plaintiffs Zarate and Lopez acknowledge that:

20 a. Plaintiffs Zarate and Lopez have had a full twenty-one (21)
21 days within which to consider Section III.J.4 of this Agreement before executing it or have freely
22 and knowingly waived the right to consider Section III.J.4 of this Agreement for a full twenty-
23 one (21) days by executing the Agreement before the expiration of the twenty-one (21)-day
24 period;

25 b. Plaintiffs Zarate and Lopez and Defendant agree that any
26 changes, whether material or immaterial, to Section III.J.4 of this Agreement, do not restart the
27 running of the twenty-one (21)-day period;

1 c. Plaintiffs Zarate and Lopez have carefully read and fully
2 understand all provisions of Section III.J.4 of this Agreement;

3 d. Plaintiffs Zarate and Lopez knowingly and voluntarily
4 agree to all of the terms set forth in Section III.J.4 of this Agreement and agree to be legally
5 bound by all of the terms set forth in Section III.J.4 of this Agreement;

6 e. Plaintiffs Zarate and Lopez have been and hereby are
7 advised in writing to consider the terms of Section III.J.4 of this Agreement and to consult with
8 an attorney;

9 f. Prior to signing this Agreement, Plaintiffs Zarate and
10 Lopez have had the opportunity to consult with counsel of their choice concerning the terms and
11 conditions of section III.J.4 of this Agreement and have done so or freely chosen not to do so;

12 g. Plaintiffs Zarate and Lopez have a full seven (7) days
13 following the execution of this Agreement to revoke Section III.J.4 of this Agreement. To
14 revoke, they must deliver a written statement of revocation to Jeffrey S. Horton Thomas at
15 JHortonThomas@FoxRothschild.com or Steven P. Gallagher at
16 StevenGallagher@FoxRothschild.com, respectively, or at Fox Rothschild LLP, 10250
17 Constellation Boulevard, Suite 900, Los Angeles, California 90067 no later than midnight on the
18 seventh (7th) day after they signed this Agreement. If any of Plaintiffs Zarate and/or Lopez
19 revoke within seven (7) days, then each Plaintiff who revokes will not be entitled to his or her
20 respective portion of the Enhancement Payments, and Section III.J.4 of this agreement shall be
21 null and void as to the Plaintiff who revokes. If Plaintiffs Zarate and Lopez do not exercise their
22 right to revoke Section III.J.4 of this Agreement, then this Agreement shall become effective on
23 the date immediately following the seven-day (7) revocation period described above; and

24 h. Plaintiffs Zarate and Lopez expressly understand that
25 among the various rights and claims being waived by Section III.J.4 of this Agreement are those
26 arising under the Age Discrimination in Employment Act (ADEA) of 1967 (29 U.S.C. § 621, *et*
27 *seq.*), but that any such claims that arise after the date of this Agreement are not waived.

1 Although Plaintiffs Zarate and Lopez are releasing claims that they may have under the Older
2 Workers Benefit Protection Act (OWBPA) and ADEA, Plaintiffs Zarate and Lopez understand
3 that they may challenge the knowing and voluntary nature of their release in Section III.J.4 of
4 this Agreement before a court, the Equal Employment Opportunity Commission (EEOC), NLRB,
5 or any other federal, state or local agency charged with the enforcement of such employment
6 laws.

7 **K. Settlement Administration**

8 1) Settlement Administrator's Duties in General. The Settlement
9 Administrator shall be responsible for: (a) processing the data provided by Defendant to be used
10 in calculating the Individual Settlement Payments; (b) preparing, printing, and mailing to the
11 Aggrieved Employees the PAGA Payment Letter (attached hereto as **Exhibit 1**), as well as
12 following up with reasonable skip tracing; (c) calculating and mailing Individual Settlement
13 Payments to Aggrieved Employees; (d) filing any required federal and state tax forms and related
14 agency reporting; (e) filing any required reports with the Court; and (g) all other tasks described
15 in this Agreement, as to which the Parties mutually agree, and/or which the Court orders the
16 Settlement Administrator to perform. The Settlement Administrator will keep the list of
17 Aggrieved Employees confidential, use it only for the purposes described herein, take adequate
18 safeguards to protect confidential or private information and return or certify the destruction of
19 the information upon completion of the Settlement Administration process.

20 2) Delivery of the Aggrieved Employee List. Within twenty-one (21)
21 calendar days after the Effective Date, Defendant will provide the Aggrieved Employee List to
22 the Settlement Administrator, which shall be made available to Plaintiffs' Counsel.

23 3) Funding of the Gross Settlement Amount. Within fifteen (15) calendar
24 days after the Effective Date, Defendant will deposit the Gross Settlement Amount into a
25 settlement fund to be established by the Settlement Administrator.

26 4) Distribution of Settlement Payments. Within seven (7) calendar days after
27 Defendant deposit the Gross Settlement Amount into a settlement fund, the Settlement
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1 Administrator will issue payments to: a) the Aggrieved Employees; b) the LWDA; and c)
2 Plaintiffs' Counsel for the Attorneys' Fees and Costs payment. The Settlement Administrator
3 will mail Individual Settlement Payments to the Aggrieved Employees, along with the PAGA
4 Payment Letter (attached hereto as **Exhibit 1**), via regular First-Class U.S. Mail, using the most
5 current, known mailing addresses identified in the Aggrieved Employees List. The Settlement
6 Administrator will also issue a payment to itself for Court-approved services performed in
7 connection with the Settlement on the twenty-eighth (28th) day after the Effective Date.

8 5) Reports Regarding Settlement Administration. The Settlement
9 Administrator will provide Defendant's Counsel and Plaintiffs' Counsel reports regarding the
10 administration of the Settlement Agreement as needed or requested.

11 6) Procedures for Uncashed Checks. Checks for Individual Settlement
12 Payments shall be negotiable for one hundred eighty (180) calendar days from the date of their
13 issuance. If a check is returned to the Settlement Administrator as undeliverable during the 180-
14 day period, the Settlement Administrator shall take all reasonable efforts to identify the
15 Aggrieved Employee's correct address, including the performance of a "skip-trace." If an
16 updated address can be identified, the Settlement Administrator shall issue another check to the
17 Aggrieved Employee and mail it to the Aggrieved Employee at his or her updated address. An
18 Aggrieved Employee who failed to receive their Individual Settlement Payment check despite
19 the procedures described herein shall nevertheless remain bound by the Settlement and the
20 release of the PAGA Released Claims contained herein. The funds represented by Individual
21 Settlement Payment checks remaining uncashed for more than 180 days after issuance
22 (collectively, the "Uncashed Settlement Checks") shall be canceled and funds associated with
23 such checks shall be considered unpaid, unclaimed or abandoned cash residue pursuant to Code
24 of Civil Procedure section 384 ("Unpaid Residue"). The Unpaid Residue plus accrued interest,
25 shall be remitted to the State Controller's Office, Unclaimed Property Division in the name of
26 each Aggrieved Employee.

1 7) Administration of Taxes by the Settlement Administrator. Before or
2 concurrent with Plaintiffs' filing of this Agreement for approval, Plaintiffs' Counsel will send
3 this agreement to the LWDA pursuant to Section 2699(1)(2) of the California Labor Code.

4 8) Declaration of Payment. Within sixty (60) calendar days after the
5 Effective Date, the Settlement Administrator shall prepare a declaration of payment stating that
6 all payments required under the Settlement have been made. Plaintiffs' Counsel shall file the
7 Settlement Administrator's declaration with the Court if requested by the Court.

8 9) Declaration Regarding Uncashed Settlement Check Funds. Within ten
9 (10) calendar days after the date the Settlement Administrator transfers the total amount of funds
10 represented by the Uncashed Settlement Checks to the State Controller's Office, Unclaimed
11 Property Division in the name of each Aggrieved Employee, the Settlement Administrator will
12 prepare a declaration stating the total amount of funds represented by the Uncashed Settlement
13 Checks and confirming that the procedures for the treatment of Uncashed Settlement Checks
14 established by this Agreement have been followed. Plaintiffs' Counsel shall file the Settlement
15 Administrator's declaration with the Court if requested by the Court.

16 **L. Miscellaneous Provisions.**

17 1) Acknowledgement That The Settlement Is Fair, Adequate, And
18 Reasonable. The Parties and their respective counsel believe that this Settlement is a fair,
19 adequate, and reasonable settlement of the Action, and they have arrived at this Settlement
20 through arm's length negotiations, taking into account all relevant factors, present and potential.

21 2) Increase in Pay Periods. Defendant represents that there are no more than
22 1,424 Pay Periods worked by Aggrieved Employees during the PAGA Period. "Pay Period"
23 means the number of pay periods that an aggrieved employee was employed by Defendant in a
24 non-exempt, hourly-paid position during the PAGA Period, based on hire dates, re-hire dates,
25 and termination dates. In the event the number of Pay Periods worked by Aggrieved Employees
26 during the PAGA Period increases by more than 5%, an increase to 1,495 Pay Periods or more,
27 then the Gross Settlement Amount shall be increased proportionally by the Pay Periods during
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the PAGA Period worked in excess of 1,424 multiplied by the Pay Period Value. The Pay Period Value shall be calculated by dividing the Gross Settlement Amount by 1,424 Pay Periods. The Parties agree that the Pay Period Value amounts to \$75.49 per Pay Period (\$107,500.00 / 1,424 Pay Periods). Thus, for example, should there be 1,600 Pay Periods worked by Aggrieved Employees during the PAGA Period, then the Gross Settlement Amount shall be increased by \$13,286.24 ((1,600 Pay Periods – 1,424 Pay Periods) x (\$75.49/Pay Period)).

3) Amendment to the Complaint in the Action. The Parties agree that Defendants is hereby estopped and will be estopped from making any argument that there is any adverse effect on the statute of limitations caused by the amendment of the Action to include Plaintiff Lopez based on Plaintiffs' PAGA Notice.

4) Mutual Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement. Such cooperation shall include, but is 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 Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by Court Order, or otherwise, to effectuate this Agreement and the terms set forth herein.

5) No Admissions By The Parties. Plaintiffs have claimed and continue to claim that the PAGA Released Claims have merit and give rise to liability on the part of Defendant. Defendant claims that the PAGA Released Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. This Agreement and compliance with this Agreement shall not be construed as an admission by Defendant of any liability whatsoever, or as admission by Defendant of any violations of Plaintiffs' and/or any Aggrieved Employee's rights, and/or violation of any order, law, statute, duty or contract whatsoever. Defendant specifically disclaims any liability to Plaintiffs or any other Aggrieved Employee for any alleged violation of their rights, or for any alleged violation of any order, law, statute, duty or contract, or for any allegation in the Action.

6) Amendment Or Modification. This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.

7) Mutual Drafting Of Agreement. The Parties agree that the terms of this Agreement and the accompanying exhibits are the result of substantial, arm's-length negotiations, and that this Agreement shall not be construed in favor of or against any of the Parties by reason of the extent to which any of the Parties or their respective counsel participated in the drafting of this Agreement.

8) Attorney Authorization. Counsel for the Parties warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement.

9) Binding On Successors And Assigns. This Agreement is binding upon, and inures to the benefit of, the Parties' successors and assigns.

10) Governing Law. This Agreement shall be governed by and interpreted according to the laws of the State of California.

11) Exhibit(s) Incorporated By Reference. The terms of this Agreement include the terms set forth in any attached exhibit(s), which are incorporated by this reference as though fully set forth herein. Any exhibit to this Agreement is an integral part of the Settlement.

12) Invalidity Of Any Provision. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provision(s) valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement valid and enforceable.

13) Notices. Whenever this Agreement requires or contemplates that one of the Parties shall or may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding Saturdays, Sundays, and holidays) express delivery service addressed to the address of the Party's counsel appearing in this Agreement.

1 14) Jurisdiction Of The Court. The Parties agree that the Court shall retain
2 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of
3 this Agreement pursuant to Code of Civil Procedure section 664.6 and all orders and judgments
4 entered in connection therewith, and the Parties and their respective counsel hereto submit to the
5 jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement
6 embodied in this Agreement and all orders and judgments entered in connection therewith.

7 15) Binding Agreement. The Parties intend that this Agreement shall be fully
8 enforceable and binding on all Parties, and that it shall be admissible and subject to disclosure in
9 any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions
10 that otherwise might apply under federal or state law.

11 16) Entire Agreement. Upon full execution of this Agreement and any
12 attached exhibits, it shall constitute the entirety of the Parties' settlement terms as it pertains to
13 this subject matter (i.e., settlement and release of the PAGA Released Claims by Aggrieved
14 Employees). Upon full execution, no other prior or contemporaneous written or oral agreements
15 may be deemed binding on the Parties as it pertains to this limited subject matter.

16 17) Counterparts. This Agreement may be executed in one or more
17 counterparts. All executed counterparts and each of them, including facsimile and scanned
18 copies of the signature page, will be deemed to be one and the same instrument provided that
19 counsel for the Parties to this Agreement exchange among themselves copies or originals of the
20 signed counterparts.

21 18) Advice of Counsel: The Parties to this Agreement are represented by
22 competent counsel, and they have had an opportunity to consult with counsel. The Parties to this
23 Agreement agree that it reflects their good faith compromise of the claims raised in the Action,
24 based upon their assessment of the mutual risks and costs of further litigation and the assessments
25 of their respective counsel.

26 19) Parties' Authority. The signatories to this Agreement, including any
27 person executing on behalf of a corporate signatory, warrant and represent that they are fully
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1 authorized to enter into this Agreement and to bind the Parties hereto to the terms and conditions
2 of the Agreement.

3 **IT IS SO AGREED:**

4 Dated: _____, 2024

Rodolfo Zarate
Plaintiff

6 Dated: _____, 2024

Julio Lopez
Plaintiff

9 Dated: 05/17/24
10 _____

DocuSigned by:



AFEE5DC14F2244D...
Clark and White Landscape, a California
corporation
Defendant
By: Dana White, authorized signatory

13 **APPROVED AS TO FORM ONLY:**

14 Dated: _____, 2024

Jasmin K. Gill
Sacha Pomares
**Counsel for Plaintiffs Rodolfo Zarate and Julio
Lopez**

18 Dated: 05/16/24
19 _____

DocuSigned by:



4489682E1A424D2...
Jeffrey S. Horton Thomas
Steven P. Gallagher
**Counsel for Defendant Clark and White
Landscape**

1 authorized to enter into this Agreement and to bind the Parties hereto to the terms and conditions
2 of the Agreement.

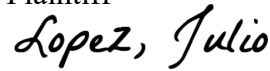
3 **IT IS SO AGREED:**

4 Dated: 06 / 26 / 2024, 2024



Rodolfo Zarate
Plaintiff

6 Dated: 06 / 27 / 2024, 2024



Julio Lopez
Plaintiff

9 Dated: _____, 2024

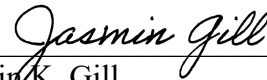
Clark and White Landscape, a California
corporation
Defendant

By: _____

Its: _____

13 **APPROVED AS TO FORM ONLY:**

14 Dated: June 28, 2024



Jasmin K. Gill
Sacha Pomares

Counsel for Plaintiffs Rodolfo Zarate and Julio Lopez

18 Dated: _____, 2024

Jeffrey S. Horton Thomas

Steven P. Gallagher

Counsel for Defendant Clark and White Landscape

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EXHIBIT 1

NOTICE OF SETTLEMENT OF PAGA REPRESENTATIVE ACTION

Zarate, et. al v. Clark and White Landscape

Superior Court for the State of California, County of Los Angeles Case No. 23SMCV01977

Eligible Employee

Address

Address

You are receiving this notice in connection with a Court-approved settlement (the “Settlement”) in the lawsuit entitled *Zarate, et. al v. Clark and White Landscape*, Los Angeles County Superior Court for the State of California, Case No. 23SMCV01977 (the “Action”), brought on a representative basis under the Labor Code Private Attorneys’ General Act of 2004 codified at California Labor Code section 2698, *et seq.* (“PAGA”). The plaintiffs in the lawsuit are Rodolfo Zarate and Julio Lopez (collectively, “Plaintiffs”) and the defendant is Clark and White Landscape (“C&W or “Defendant”). The Settlement provides for recovery of civil penalties for alleged violations of the California Labor Code on behalf of all hourly-paid, non-exempt employees who were employed by Defendant in the State of California (“Eligible Employees”) between February 28, 2022 through November 6, 2023 (the “PAGA Period”). The PAGA statute provides that 75% of any recovery pursuant to the Settlement be paid to the State of California and 25% of any recovery be paid to the “aggrieved employee” group, which in this case is the group of Eligible Employees.

Defendant denies all claims and allegations in the Action, denies that it owes any penalties, and asserts that it has fully complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and time in defending the Action, Defendant has settled the Action. By settling the lawsuit, Defendant is not admitting that it has done anything wrong.

The Settlement resolves any and all claims that were asserted in the factual allegations and legal assertions made in the Action under PAGA, including all claims and causes of action for civil penalties that could have been asserted in the Action based on the factual allegations and legal assertions alleged up through and specifically including the entire PAGA Period, under PAGA, whether or not specifically delineated as a claim or cause of action in the Action. The released PAGA claims include but are not limited to those (a) alleged in any of Plaintiffs’ notices provided to the LWDA, the operative complaint in the Action, and any amended complaint in the Action, including claims that arise out of the claims and facts alleged in the Action under PAGA, (b) any claims under PAGA which could have reasonably been asserted under PAGA in the Action arising from the alleged facts and/or primary rights alleged to have been invaded, and (c) any other claims under PAGA to the extent that they that are premised upon or arise out of PAGA Released Claims for failure to pay all wages due, failure to provide minimum wages or pay for all hours worked, failure to pay overtime compensation, failure to provide meal and/or rest periods, failure to pay proper meal or rest period penalties, failure to keep accurate time records, failure to provide and maintain accurate itemized wage statements, failure to keep accurate employee payroll records, failure to timely pay wages due during or at separation of employment, failure to reimburse all business-related expenses, failure to provide paid sick leave, and claims reasonably relating to the alleged violations of California Labor Code sections 96(k), 98.6, 200-204, 206, 206.5, 210, 226, 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5, 2699, *et seq.*, 2802 and 2810.5, against the Released Parties; (d) to the extent that they are premised upon or arise out of the PAGA Released Claims, Labor Code sections 216, 218.6 and 558. (“PAGA Released Claims”).

The “Released Parties” means Defendant and each of its respective past, present and future agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, fictitious business names, equity sponsors, related companies/corporations and/or

partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, any actual or alleged joint employers, affiliates, alter-egos, representatives, and affiliated organizations, and all of its respective past, present and future employees, directors, officers, agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, successors, and assigns.

By an Order dated **Approval Date**, the Superior Court of California approved the Settlement of the Released Claims. By approving the Settlement, the Court did not decide in favor of either Plaintiffs or Defendant.

According to Defendant's records, you are an Eligible Employee and are therefore entitled to a share of the Settlement based upon the Court-approved allocation. Enclosed with this Notice is your check for your share. The settlement check shall remain valid for one hundred eighty (180) days. Thereafter, all uncashed checks shall be canceled, and funds associated with such checks shall be considered unpaid, unclaimed, or abandoned cash pursuant to Code of Civil Procedure section 384 ("Unpaid Residue"). The Unpaid Residue plus accrued interest, shall be remitted to the California State Controller's Office, Unclaimed Property Division in the name of each Eligible Employee.

Please Note: One hundred percent (100%) of the payment you are receiving in connection with the Settlement will be considered penalties reported on IRS Form 1099, and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences of your settlement payment. Neither Plaintiffs nor Defendant nor their attorneys have made any representations or warranties regarding the taxation of your settlement payment. Nothing in this Notice or any other communication shall constitute or be construed or relied upon as tax advice.

PLEASE DO NOT CALL OR WRITE THE COURT OR OFFICE OF THE CLERK TO ASK QUESTIONS ABOUT THE SETTLEMENT. IF YOU HAVE ANY QUESTIONS, YOU MAY CALL OR WRITE TO THE SETTLEMENT ADMINISTRATOR AT:

[ADMIN NAME]

[ADDRESS]

[ADDRESS]

[ADDRESS]