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9 *Additional Counsel Listed on Next Page*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 11 **FOR THE COUNTY OF SAN JOAQUIN**

12
 13 MARTIN JAVIER HERNANDEZ and
 14 VICENTE SERRANO, individuals on behalf of
 themselves, the State of California, as private
 15 attorneys general, and on behalf of all others
 16 similarly situated,

17 Plaintiffs,

18 v.

19 ODYSSEY LANDSCAPING COMPANY,
 20 INC., a California Corporation; ODYSSEY
 21 LANDSCAPE COMPANY INC., an Unknown
 22 Entity; and DOES 1 TO 50,

23 Defendants.

Case No.: STK-CV-UOE-2021-11109

**Class Action and PAGA Settlement
Agreement and Release**

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Attorneys for Defendant Odyssey Landscaping Company, Inc.

SETTLEMENT AGREEMENT AND RELEASE OF CLASS ACTION

This Settlement Agreement and Release of Class Action (“Settlement Agreement”) is made and entered into by: (1) Plaintiffs Martin Javier Hernandez and Vicente Serrano (collectively “Plaintiffs”), individually and in their representative capacity on behalf of the Settlement Class, as defined below, and as private attorneys general on behalf of the State of California; and (2) Defendant Odyssey Landscaping Company, Inc. (“Defendant”). Plaintiffs and Defendant are collectively referred to herein as the “Parties.” This Settlement Agreement is subject to the approval of the Court, pursuant to California Rules of Court, rule 3.769, subdivisions (c), (d), and (e), and is made for the sole purpose of attempting to consummate settlement of the action on a class-wide basis subject to the following terms and conditions. As detailed below, if the Court does not enter an order granting final approval of this Settlement Agreement or the material conditions precedent are not met for any reason, this Settlement Agreement is void and of no force or effect whatsoever.

1. DEFINITIONS

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

1.1. ACTION

“Action” shall mean the following civil action: *Martin Javier Hernandez, et al. v. Odyssey Landscaping Company, Inc., et al.*, case number STK-CV-UOE-2021-11109, currently pending before the Superior Court of the State of California for the County of San Joaquin.

1.2. ADMINISTRATIVE EXPENSES

“Administrative Expenses” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid. These expenses are estimated not to exceed \$8,250.00.

1 **1.3. APPLICABLE WAGE ORDERS**

2 “Applicable Wage Orders” shall mean the California Industrial Welfare Commission (“IWC”)
3 Wage Orders applicable to the facts of this case, including IWC Wage Orders 5-2001 and 16-2001 and
4 others that may be applicable. (Cal. Code of Regs., tit. 8, §§ 11050, 11160.)

5 **1.4. CLAIMS**

6 “Claims” shall mean all claims, rights, demands, liabilities, and causes of action that were
7 alleged or reasonably could have been raised based on the facts alleged in the operative complaint
8 during the Class Period, regardless of the theory of recovery.

9 **1.5. CLASS ATTORNEY FEES AND EXPENSES**

10 “Class Attorney Fees and Expenses” shall mean the portion of the Gross Settlement Amount
11 attributable to attorney fees and litigation expenses. The Parties agree that the fee-portion of the Class
12 Attorney Fees and Expenses shall be up to one-third of the Gross Settlement Amount (i.e.,
13 \$133,333.33), as approved by the Court, and the award of costs and expenses shall be up to an
14 additional \$15,000.00. If the Escalator Provision described below is triggered so as to increase the
15 Gross Settlement Amount, the Parties agree that the fee portion of the Class Attorney Fees and
16 Expenses will increase proportionally such that the total amount of attorneys’ fees remains one-third
17 of the Gross Settlement Amount *after* the upward adjustment required by the Escalator Provision is
18 implemented. The Parties agree that the Court’s approval of any request for Class Attorney Fees and
19 Expenses is not a condition of the Settlement Agreement and that an award of less than the amounts
20 requested would not give rise to a basis to abrogate or void the Settlement Agreement, although Class
21 Counsel reserve the right to appeal an award of attorneys’ fees that is less than one-third of the Gross
22 Settlement Amount.

23 **1.6. CLASS COUNSEL**

24 “Class Counsel” shall mean Jonathan Melmed, Kyle Smith, and Joanne Kim of Melmed Law
25 Group P.C.

26 **1.7. CLASS MEMBER**

27 The term “Class Member” or “Settlement Class” shall include all current or former hourly-paid
28 or non-exempt employees employed by Defendant in the State of California during the Class Period.

1 **1.8. CLASS NOTICE**

2 “Class Notice” shall mean the *Notice of Proposed Class Action Settlement*, as set forth in the
3 form of **Exhibit 1** attached hereto, or as otherwise approved by the Court, which is to be mailed to
4 Class Members along with the Share Form.

5 **1.9. CLASS PARTICIPANTS**

6 “Class Participants” or “Participating Class Members” shall mean all Class Members who do
7 not timely request exclusion from the Class Settlement.

8 **1.10. CLASS PERIOD**

9 “Class Period” shall mean the period from December 7, 2017, through the earlier of April 18,
10 2023, or the date of preliminary approval of the settlement.

11 **1.11. CLASS REPRESENTATIVES**

12 “Class Representatives” shall mean Plaintiffs Martin Javier Hernandez and Vicente Serrano.

13 **1.12. CLASS SETTLEMENT**

14 “Class Settlement” shall mean the settlement embodied in this Settlement Agreement, which is
15 subject to Court approval.

16 **1.13. COMPLAINT**

17 “Complaint” shall mean the currently-operative complaint in the Action.

18 **1.14. COURT**

19 “Court” shall mean the Superior Court of the State of California for the County of San Joaquin.

20 **1.15. DEFENDANT**

21 “Defendant” shall mean Defendant Odyssey Landscaping Company, Inc.

22 **1.16. DEFENSE COUNSEL**

23 “Defense Counsel” shall mean the attorneys representing Defendant.

24 **1.17. EFFECTIVE DATE**

25 “Effective Date” shall be the date when all of the following events have occurred: **(a)** this
26 Settlement Agreement has been executed by all Parties and by Class Counsel and Defense Counsel;
27 **(b)** the Court has given preliminary approval to the Class Settlement; **(c)** notice has been given to the
28 Settlement Class providing them with an opportunity to request exclusion from the Class Settlement;

1 (d) the Court has held a Final Approval and Fairness Hearing and entered a final order and judgment
2 certifying the Settlement Class and approving this Settlement Agreement; and (e) the later of the
3 following events: (i) the expiration of the period for filing any appeal, writ, or other appellate
4 proceeding opposing the Class Settlement has elapsed without any appeal, writ, or other appellate
5 proceeding having been filed; (ii) the dismissal of any appeal, writ, or other appellate proceeding
6 opposing the Class Settlement with no right to pursue further remedies or relief; or (iii) any appeal,
7 writ, or the issuance of such other final appellate order upholding the Court’s final order with no right
8 to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Class
9 Settlement shall not become effective until the Court’s order approving the Class Settlement is
10 completely final and there is no further recourse by an appellant or objector who seeks to contest the
11 Class Settlement. If no objections are filed, the Effective Date shall be after steps (a) through (d) are
12 completed (i.e., the date that the court has entered a final order and judgment certifying the Settlement
13 Class and approving this Settlement Agreement).

14 **1.18. EMPLOYEE’S TAXES AND REQUIRED WITHHOLDING**

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

21 **1.19. EMPLOYER’S TAXES**

22 “Employer’s Taxes” shall mean and refer to Defendant’s share of payroll taxes (e.g.,
23 Unemployment Insurance, Employment Training Tax, Social Security, and Medicare taxes) that is
24 owed on the portion of any Class Participant’s Individual Settlement Amount that constitutes wages.
25 The Employer’s Taxes shall be separately paid by Defendant and shall not be paid from the Gross
26 Settlement Amount or Net Settlement Amount.

1 **1.20. FINAL APPROVAL AND FAIRNESS HEARING**

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

4 **1.21. GROSS SETTLEMENT AMOUNT**

5 “Gross Settlement Amount” is the agreed upon non-reversionary settlement amount totaling
6 \$400,000.00 to be paid by Defendant in full settlement of the Released Claims asserted in this case,
7 inclusive of the Administrative Expenses, the Employee’s Taxes and Required Withholdings, the Class
8 Attorney Fees and Expenses, the Incentive Awards, and PAGA Payment. This Gross Settlement
9 Amount has been agreed to by Plaintiff and Defendant based on the aggregation of the agreed-upon
10 settlement value of individual claims. In no event will Defendant be liable for more than the Gross
11 Settlement Amount except as otherwise explicitly set forth herein. There will be no reversion of the
12 Gross Settlement Amount to Defendant. Defendant will pay any employer-side payroll taxes owing on
13 the portion of the Gross Settlement Amount allocated toward wages on top of and in addition to the
14 Gross Settlement Amount.

15 **1.22. HEARING ON PRELIMINARY APPROVAL**

16 “Hearing on Preliminary Approval” shall mean the hearing held on the motion for preliminary
17 approval of the Class Settlement.

18 **1.23. INCENTIVE AWARDS**

19 “Incentive Awards” shall mean the additional monetary payment of \$7,500, subject to Court
20 approval, that is to be provided to each of the Class Representatives for their efforts and risks on behalf
21 of the Settlement Class in this Action. An award of less than the requested amount will not give rise to
22 a basis to abrogate the Settlement Agreement. Further, an award of less than the requested amount will
23 not give rise to a basis to abrogate the general release executed by Plaintiff, and each of them.

24 **1.24. INDIVIDUAL SETTLEMENT AMOUNT**

25 “Individual Settlement Amount” shall mean the amount which is ultimately distributed to each
26 Class Participant, less any Employee’s Taxes and Required Withholdings. The Individual Settlement
27 Amount does not include any portion of the PAGA Payment.
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1 **1.25. NET SETTLEMENT AMOUNT**

2 “Net Settlement Amount” shall mean the Gross Settlement Amount minus the Court-approved
3 items of Administrative Expenses; Class Attorney Fees and Expenses; the PAGA Payment; and
4 Plaintiffs’ Incentive Awards.

5 **1.26. OPT OUT**

6 “Opt Out” shall refer to the process of submitting a timely and valid request for exclusion from
7 the Class Settlement in accordance with the terms of the Class Notice and no later than the Response
8 Deadline.

9 **1.27. OPT-OUTS**

10 “Opt-Outs” shall mean all persons who timely and validly request exclusion from the Class
11 Settlement in accordance with the terms of the Class Notice and no later than the Response Deadline.
12 Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Opt-Outs
13 who are part of the PAGA Settlement Class are subject to the release set forth in Paragraph 1.35 of this
14 Agreement and are eligible for an Individual PAGA Payment.

15 **1.28. PAGA PAYMENT**

16 “PAGA Payment” means the penalties pursuant to PAGA that the Parties have agreed is a
17 reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is
18 **\$110,000.00** (i.e., 27.5% of the Gross Settlement Amount). The PAGA Payment is to be approved by
19 the Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-five percent
20 (75%) (i.e., **\$82,500.00**) to the LWDA and twenty-five percent (25%) (i.e., **\$27,500.00**) to the PAGA
21 Settlement Class. Class Counsel shall give timely notice of this Settlement Agreement to the LWDA
22 pursuant to Labor Code section 2699, subdivision (1)(2).

23 **1.29. PAGA PERIOD**

24 “**PAGA Period**” shall mean the period from December 3, 2020, through the earlier of April 18,
25 2023, or the date of preliminary approval of the settlement.

26 **1.30. PAGA SETTLEMENT CLASS**

27 “PAGA Settlement Class” shall mean all individuals who are or were employed by Defendant
28 as non-exempt employees in California during the PAGA Period.

1 **1.31. PARTIES**

2 “Parties” shall mean Plaintiffs and Defendant.

3 **1.32. PLAINTIFFS**

4 “Plaintiffs” shall mean Plaintiffs Martin Javier Hernandez and Vicente Serrano.

5 **1.33. PRELIMINARY APPROVAL DATE**

6 “Preliminary Approval Date” shall mean the date upon which the Court enters an order
7 preliminarily approving this Settlement Agreement.

8 **1.34. RELEASED CLASS CLAIMS**

9 “Released Class Claims” shall mean all claims, rights, demands, liabilities, and causes of action
10 that were alleged or reasonably could have been raised based on the facts alleged in the operative
11 Complaint and/or PAGA notice to the LWDA, regardless of the theory of recovery, during the Class
12 Period, including claims for: **(1)** failure to pay minimum wage for all hours worked in violation of
13 Labor Code sections 1194, 1194.2, 1197, 1198, 204, 218.5, and the Applicable Wage Orders; **(2)** failure
14 to pay proper overtime wages in violation of Labor Code sections 204, 510, 1194, 1197, and 1198, and
15 the Applicable Wage Orders; **(3)** failure to provide compliant rest periods and pay missed rest break
16 premiums in violation of Labor Code section 226.7 and the Applicable Wage Orders; **(4)** failure to
17 provide compliant meal periods and pay missed meal period premiums in violation of Labor Code
18 sections 226.7 and 512, and the Applicable Wage Orders; **(5)** failure to maintain accurate employment
19 records in violation of Labor Code sections 1174 and 1174.5; **(6)** failure to pay timely wages during
20 employment in violation of Labor Code sections 200, 204, 210, 216, 218, and 218.5; **(7)** failure to pay
21 all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; **(8)** failure
22 to reimburse business expenses in violation of Labor Code sections 2802 and 2804; **(9)** failure to
23 provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3;
24 **(10)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation
25 of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); and **(11)** all claims for
26 liquidated damages, penalties, interest, fees, costs based on the foregoing.

1 **1.35. RELEASED PAGA CLAIMS**

2 “Released PAGA Claims” shall mean those claims arising out of or related to the allegations
3 set forth in the Complaint and/or PAGA notice to the LWDA, regardless of the theory of recovery,
4 during the Class Period, including claims for penalties pursuant to alleged violations of Labor Code
5 sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197,
6 1197.1, 1198, 1198.5, 1199, 2802, 2804, and the Applicable Wage Orders.

7 **1.36. RELEASED PARTIES**

8 “Released Parties” shall mean Defendant and all of Defendant’s present and former parent
9 companies, subsidiaries, affiliates, owners, investors, shareholders, officers, directors, employees,
10 agents, servants, registered representatives, attorneys, insurers, successors and assigns. This includes
11 Odyssey Holdings, Inc. and its subsidiaries, affiliates, owners, investors, shareholders, officers,
12 directors, employees, agents, servants, registered representatives, attorneys, insurers, successors and
13 assigns.

14 **1.37. RELEASING PARTIES**

15 “Releasing Parties” shall mean every Class Participant and all persons purporting to act on their
16 behalf or purporting to assert a claim under or through them, including, but not limited to, their
17 dependents, heirs, assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees,
18 conservators, guardians, personal representatives, and successors-in-interest, whether individual, class,
19 representative, legal, equitable, direct or indirect, or any other type or in any other capacity.

20 **1.38. RESPONSE DEADLINE**

21 “Response Deadline” shall mean the date forty-five (45) days following the date on which the
22 Settlement Administrator first mails Class Notice to the Class Members and the last day on which Class
23 Members may submit a request for exclusion and/or objection to Class Settlement.

24 **1.39. SETTLEMENT ADMINISTRATOR**

25 “Settlement Administrator” shall mean Phoenix Settlement Administrators (or other
26 administrator agreed on by the parties) which the Parties have agreed will be responsible for
27 administration of the Class Settlement and related matters.

28

1.40. SHARE FORM

“Share Form” shall mean the *Class Action Settlement Share Form*, as set forth in the form of Exhibit 2 attached hereto, or as otherwise approved by the Court, which is to be mailed to Class Members along with the Class Notice.

2. FACTUAL AND PROCEDURAL BACKGROUND

2.1. PLAINTIFFS’ CLAIMS

Plaintiffs, individually and in their representative capacity on behalf of the Settlement Class, and as private attorneys general on behalf of the State of California, have alleged the following violations: (1) failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194, 1194.2, 1197, 1198, 204, 218.5 and the Applicable Wage Orders; (2) failure to pay proper overtime wages in violation of Labor Code sections 204, 510, 1194, 1197, and 1198, and the Applicable Wage Orders; (3) failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the Applicable Wage Orders; (4) failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Orders; (5) failure to maintain accurate employment records in violation of Labor Code sections 1174 and 1174.5; (6) failure to pay timely wages during employment in violation of Labor Code sections 200, 204, 210, 216, 218, and 218.5; (7) failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; (8) failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804; (9) failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; (10) deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); and (11) statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698–2699.6).

2.2. DISCOVERY, INVESTIGATION, RESEARCH, AND MEDIATION

The Parties, by and through Class Counsel and Defense Counsel, have conducted significant informal discovery during the prosecution of the Action. This discovery, investigation, and prosecution has included, among other things, (a) over a dozen telephonic conferences with Plaintiffs; (b) inspection and analysis of hundreds of pages of documents and other information produced by

1 Defendant; **(c)** analysis of employment data from a sample of Class Members; **(d)** an analysis of the
2 legal positions taken by Defendant; **(e)** investigation into the viability of class treatment of the claims
3 asserted in the Action; **(e)** analysis of potential class-wide damages, including information sufficient to
4 understand Defendant's potential defenses to Plaintiffs' claims; **(f)** research of the applicable law with
5 respect to the claims asserted in the Complaint and the potential defenses thereto; and **(g)** assembling
6 and analyzing of data for calculating damages.

7 Class Counsel and the Class Representatives have vigorously prosecuted this case, and
8 Defendant has vigorously contested it. The Parties have engaged in sufficient investigation and
9 discovery to assess the relative merits of the claims of the Class Representatives and of the defenses to
10 them. After such discovery, investigation, and prosecution, the Parties attended a full-day mediation
11 with an experienced employment law mediator, which culminated in a settlement in principle, the terms
12 of which are elaborated in this Settlement Agreement.

13 **2.3. ALLEGATIONS OF THE CLASS REPRESENTATIVES AND BENEFITS OF**
14 **CLASS SETTLEMENT**

15 The document and data exchange in this matter, as well as discussions between counsel, have
16 been adequate to give the Class Representatives and Class Counsel a sound understanding of the merits
17 of their positions and to evaluate the value of the claims of the Settlement Class. The informal discovery
18 conducted in this Action and the information exchanged by the Parties through pre-mediation
19 discussions are sufficient to reliably assess the merits of the Parties' respective positions and to
20 compromise the issues on a fair and equitable basis.

21 The Class Representatives and Class Counsel believe that the claims, causes of action,
22 allegations, and contentions asserted in the Action have merit. However, the Class Representatives and
23 Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings
24 necessary to prosecute the Action against Defendant through trial and through appeals. Class Counsel
25 has taken into account the uncertain outcome of the litigation, the risk of continued litigation in complex
26 actions such as this, as well as the difficulties and delays inherent in such litigation, and the potential
27 difficulty of obtaining certification of the Settlement Class as well as trying the claims of the class.
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1 Class Counsel is mindful of the potential problems of proof under, and possible defenses to, the claims
2 alleged in the Action.

3 The Class Representatives and Class Counsel believe that the settlement set forth in this
4 Settlement Agreement is fair and reasonable, and confers substantial benefits upon Plaintiffs and the
5 Settlement Class and that an independent review of this Settlement Agreement by the Court in the
6 approval process will confirm this conclusion. Based on their own independent investigation and
7 evaluation, Class Counsel has determined that the settlement set forth in this Settlement Agreement is
8 in the best interests of Plaintiffs and the Class Members.

9 **2.4. DEFENDANT'S DENIALS OF WRONGDOING AND LIABILITY**

10 Defendant has denied and continues to deny all allegations, claims, and contentions alleged by
11 Plaintiffs in the Action. Defendant has expressly denied and continues to deny all charges of
12 wrongdoing or liability against them arising out of any of the conduct, statements, acts, or omissions
13 alleged in the Action. Defendant contends that it complied with California and federal wage and hour
14 laws and have dealt legally and fairly with Plaintiffs and the Class Members.

15 Defendant further denies that, for any purpose other than settling this Action, these claims are
16 appropriate for class or representative treatment. Nonetheless, Defendant has concluded that further
17 proceedings in the Action would be protracted and expensive and that it is desirable that the Action be
18 fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement
19 Agreement to dispose of burdensome and protracted litigation, to permit the operation of Defendant's
20 business without further expensive litigation and the distraction and diversion of their personnel with
21 respect to matters at issue in the Action. Defendant has also taken into account the uncertainty and risks
22 inherent in any litigation, especially in complex cases such as the Action. Defendant has, therefore,
23 determined that it is desirable and beneficial to them that the Action be settled in the manner and upon
24 the terms and conditions set forth in this Settlement Agreement.

25 **2.5. INTENT OF THE CLASS SETTLEMENT**

26 The Class Settlement set forth herein intends to achieve the following: **(1)** entry of an order
27 approving the Class Settlement; **(2)** entry of judgment of the Action; **(3)** discharge of the Released
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1 Parties from liability for any and all of the Released Claims; and (4) discharge of Defendant from
2 liability for any and all claims arising out of the Action as specified herein.

3 **3. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

4 For the purposes of this Settlement Agreement and the Class Settlement of this Action only, the
5 Parties agree to conditional class certification of the Settlement Class. The certification of the
6 Settlement Class shall not constitute, in this or any other proceeding, an admission of any kind by
7 Defendant, including without limitation, that certification of a class for trial purposes is or would be
8 warranted, appropriate or proper; or that Plaintiffs could establish any of the requisite elements for
9 class treatment of any of the claims in the Action.

10 If the Settlement Agreement is not finally approved by the Court, the Effective Date is not
11 achieved, or the Class Settlement is rejected, terminated, or otherwise rendered null and void as set
12 forth herein, then certification of the Settlement Class shall be automatically vacated, shall be void *ab*
13 *initio*, of no force or effect, and shall not constitute evidence or a binding determination that the
14 requirements for certification of a class for trial purposes in this Action or in any other action which
15 have been, are or can be, satisfied. Further, if the Agreement does not reach the Effective Date,
16 Plaintiffs agree that Plaintiffs will not argue, claim, reference, or otherwise raise any preliminary
17 approval of the Settlement Class in connection with any later proceeding before the Court.

18 **4. APPOINTMENT OF CLASS COUNSEL**

19 For purposes of this Settlement Agreement and subject to the Court's approval, the Parties agree
20 to the appointment of Class Counsel as counsel for the Class Participants and the effectuation of the
21 Class Settlement pursuant to this Settlement Agreement.

22 **5. CONSIDERATION**

23 **5.1. GROSS SETTLEMENT AMOUNT**

24 As set forth above, the Parties agree to settle this Action for the Gross Settlement Amount of
25 \$400,000.00. There shall be no reversion to Defendant. Defendant shall pay the Gross Settlement
26 Amount in full. The Gross Settlement Amount and other actions and forbearances taken by Defendant
27 shall constitute adequate consideration for the Class Settlement and will be made in full and final
28 settlement of: the Released Claims, the Class Attorney Fees and Expenses, Administrative Expenses,

1 the Incentive Awards, the PAGA Payment (and any payments to individual PAGA Class Members
2 resulting from the PAGA Payment), and any other obligation of Defendant under this Settlement
3 Agreement (other than the Employer’s Taxes on the portion of the Net Settlement Amount allocated to
4 the payment of wages).

5 After the Court issues an order preliminarily approving this Class Settlement, the Settlement
6 Administrator will distribute the Class Notice to the Class Members, which shall describe the terms of
7 the Class Settlement and procedures to Opt Out, object, or participate in the Class Settlement as well
8 as the Share Form, which shall identify the Class Member, the number of workweeks worked by each
9 Class Member (“Workweeks”), the number of pay periods worked by the PAGA Class Members (“Pay
10 Periods”), as well as the estimated amount of the Individual Settlement Amount and portion of the
11 PAGA Payment the Class Member can expect to receive once the Class Settlement becomes effective
12 on the Effective Date. Class Members shall be given the opportunity to challenge their Workweeks
13 information.

14 **5.2. INCENTIVE AWARDS FOR PLAINTIFFS**

15 Plaintiffs may petition the Court to approve Incentive Awards in an amount up to \$7,500.00 for
16 Martin Javier Hernandez and \$7,500.00 for Vicente Serrano to acknowledge their efforts on behalf of
17 the Settlement Class in this Action, including assisting in the investigation and consulting with Class
18 Counsel and providing crucial documents to Class Counsel. Defendant shall not oppose a request by
19 Plaintiffs for Incentive Awards in these amounts. Any Incentive Award approved by the Court shall be
20 paid to Plaintiffs from the Gross Settlement Amount and shall be in addition to any distribution to
21 which they may otherwise be entitled as a Class Participants. Any Incentive Award approved by the
22 Court shall not be considered wages, and the Settlement Administrator shall issue to Plaintiffs an IRS
23 Form 1099 reflecting such payment. Plaintiffs, and each of them, shall be responsible for the payment
24 of all taxes with respect to any Incentive Award approved by the Court and shall hold Defendant
25 harmless from all liability with regard thereto. An award of less than the requested amount to either
26 Plaintiff will not give rise to a basis to abrogate the Settlement Agreement. Further, an award of less
27 than the requested amount to either Plaintiff will not give rise to a basis to abrogate the general release
28 executed by either Plaintiff.

1 **5.3. PAYMENT TO CLASS PARTICIPANTS**

2 Each Class Participant shall be eligible to receive payment of the Individual Settlement
3 Amount, which is a share of the Net Settlement Amount based on the pro rata number of weeks worked
4 by that Class Member during the Class Period as a proportion of all weeks worked by all Participating
5 Class Members. The Individual Settlement Amount will be reduced by any required deductions for
6 each Participating Class Member as specifically set forth herein, including employee-side tax
7 withholdings or deductions. Each Class Participant, including Plaintiffs, shall be responsible for the
8 payment of the Employee's Taxes and Required Withholding with respect to his or her Individual
9 Settlement Amount and shall hold Defendant harmless from any and all liability with regard thereto.

10 **5.4. PAYMENT TO PAGA SETTLEMENT CLASS**

11 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
12 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have
13 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which
14 is \$110,000.00 (i.e., 27.5% of the Gross Settlement Amount). The PAGA Payment must be approved
15 by the Court pursuant to Labor Code section 2699 and is to be distributed pursuant to Labor Code
16 section 2669(i) as follows: seventy-five percent (75%) (i.e., \$82,500.00) to the LWDA and twenty-five
17 percent (25%) (i.e., \$27,500.00) to the PAGA Settlement Class. The portion of the PAGA Payment
18 allocated to the PAGA Settlement Class shall be distributed to the PAGA Settlement Class based on
19 the pro rata number of pay periods worked by each particular PAGA Settlement Class member during
20 the PAGA Period as a proportion of all pay periods worked by all members of the PAGA Settlement
21 Class.

22 **5.5. TAX TREATMENT AND PAYMENT**

23 For the purpose of calculating Employee's Taxes and Required Withholding for the Individual
24 Settlement Amounts for Class Participants (including Individual Settlement Amounts to the Class
25 Representatives but exclusive of their Incentive Award), the Parties agree that 30% of each Individual
26 Settlement Amount shall constitute payment in the form of wages (and each Class Participant will be
27 issued an IRS Form W-2 for such payment to him or her), and 70% of each Individual Settlement
28 Amount shall constitute penalties and interest (and each Class Participant will be issued an IRS Form

1 1099 for such payment to him or her). Prior to final distribution, the Settlement Administrator shall
2 calculate the total Employee's Taxes and Required Withholding due as a result of the wage portion of
3 Class Participants' anticipated Individual Settlement Amounts. The Individual Settlement Payment will
4 be reduced by any required deductions for each Participating Class Member as specifically set forth
5 herein, including employee-side tax withholdings or deductions. Additionally, prior to the funding of
6 the Gross Settlement Amount and final distribution, the Settlement Administrator shall calculate the
7 total Employer's Taxes due on the wage portion of the Class Participants' Individual Settlement
8 Amounts and issue instructions to Defendant to separately fund these tax obligations/withholdings. The
9 Parties understand that Plaintiffs and the Class Participants who receive any payment pursuant to this
10 Settlement Agreement shall be solely responsible for all other individual tax obligations.

11 With respect to the PAGA Payment and any payments made to individual members of the
12 PAGA Settlement Class, all such payments shall be treated as payments owing for penalties and interest
13 thereon and shall not be considered wages. The Settlement Administrator shall issue to members of the
14 PAGA Settlement Class an IRS Form 1099 reflecting such payment. Members of the PAGA Settlement
15 Class shall be solely responsible for the payment of all taxes with respect to any PAGA payments made
16 to them.

17 **5.6. NO EFFECT ON EMPLOYEE BENEFIT PLANS**

18 Neither the Class Settlement nor any amounts paid under the Class Settlement will modify any
19 previously credited hours, days, or weeks of service under any employee benefit plan, policy or bonus
20 program sponsored by Defendant. Such amounts will not form the basis for additional contributions to,
21 benefits under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies,
22 or bonus programs. The payments made under the terms of this Settlement Agreement shall not be
23 applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other
24 form of compensation for the purposes of any of Defendant's benefit plan, policy, or bonus program.
25 Defendant retains the right to modify the language of their benefits plans, policies, and bonus programs
26 to reflect this intent and to make clear that any amounts paid pursuant to this Settlement Agreement are
27 not for "weeks worked," "weeks paid," "weeks of service," or any similar measuring term as defined
28 by applicable plans, policies, and bonus programs for purpose of eligibility, vesting, benefit accrual, or

1 any other purpose, and that additional contributions or benefits are not required by this Settlement
2 Agreement. Defendant does not consider the Class Settlement payments “compensation” for purposes
3 of determining eligibility for, or benefit accrual within, any benefit plans, policies, or bonus programs,
4 or any other plan sponsored by Defendant.

5 **5.7. CLASS ATTORNEY FEES AND EXPENSES**

6 As part of the motion for final approval of the Class Settlement, Class Counsel may apply for
7 an award of Class Attorney Fees and Expenses with the fee portion not to exceed one-third of the Gross
8 Settlement Amount (i.e., \$133,333.33) and the award of costs and expenses up to an additional
9 \$15,000.00. Defendant agrees to not object to any such fee, cost, or expense application in those
10 amounts. The Parties agree that the Court’s approval of any request for attorneys’ fees or litigation
11 costs is not a condition of the Settlement Agreement and that an award of less than the amounts
12 requested would not give rise to a basis to abrogate the Settlement Agreement, although Class Counsel
13 reserve the right to appeal an award of attorneys’ fees that is less than one-third of the Gross Settlement
14 Amount or an award of costs and expenses that is less than \$15,000.00.

15 As a condition of this Class Settlement, Class Counsel has agreed to pursue fees only in the
16 manner reflected by this subsection. Any Class Attorney Fees and Expenses awarded by the Court shall
17 be paid from the Gross Settlement Amount prior to arriving at the Net Settlement Amount and shall
18 not constitute payment to any Class Members. If Class Counsel voluntarily reduces the request for
19 Class Attorney Fees and Expenses or the Court’s award of Class Attorney Fees and Expenses is less
20 than set forth above, the Net Settlement Amount shall be recalculated to reflect the actual Class
21 Attorney Fees and Expenses awarded.

22 The Class Attorney Fees and Expenses approved by the Court shall reflect: **(a)** all work
23 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
24 represent the Settlement Class through the date of this Settlement Agreement; **(b)** all work to be
25 performed and costs to be incurred in connection with approval by the Court of the Class Settlement;
26 **(c)** all work to be performed and costs and expenses, if any, incurred in connection with administering
27 the Class Settlement through the Effective Date and dismissal of the Action with prejudice; and **(d)** may
28 be based on the “catalyst theory” and/or the “common fund doctrine.”

1 **6. SETTLEMENT ADMINISTRATION**

2 **6.1. COSTS AND EXPENSES**

3 All costs and expenses due to the Settlement Administrator in connection with its administration
4 of the Class Settlement, including, but not limited to, providing the Class Notice, locating Class
5 Members, processing Opt Out requests and objections, distributing the portion of the PAGA Payment
6 payable to the LWDA, distributing the portion of the PAGA Payment payable to the members of the
7 PAGA Settlement Class, and calculating, administering and distributing Individual Settlement
8 Amounts to the Class Participants and related tax forms, shall be paid from the Gross Settlement
9 Amount, and is not expected to exceed \$8,250.00.

10 **6.2. PAYMENT BY DEFENDANT**

11 Defendant shall deposit the Gross Settlement Amount in a lump sum payment plus the
12 employer-side payroll taxes to the Settlement Administrator within thirty (30) days of the Effective
13 Date. In no event shall Defendant be obligated to pay or deposit with the Settlement Administrator
14 more than \$400,000.00 plus the Employer's Taxes, except where the Escalator Provision is triggered.

15 **7. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS**

16 **7.1. THE SETTLEMENT ADMINISTRATOR**

17 The Settlement Administrator will be responsible for: mailing the Class Notice and Share Form
18 (**Exhibit 1** and **Exhibit 2**, respectively) to Class Members; posting notice of entry of final order and
19 judgment certifying the Class Settlement and approving this Settlement Agreement; handling inquiries
20 from Class Members concerning the Class Notice; determining Individual Settlement Amounts;
21 determining individual payments to members of the PAGA Settlement Class; maintaining the
22 settlement funds in an appropriate interest-bearing account; preparing, administering, and distributing
23 Individual Settlement Amounts to Class Participants; preparing, administering, and distributing
24 individual payments to members of the PAGA Settlement Class; distributing the portion of the PAGA
25 Payment payable to the LWDA; issuing a final report and performing such other duties as the Parties
26 may direct. Additionally, the Settlement Administrator will handle all tax document preparation and
27 reporting, including state and federal tax forms, if any.

28

1 On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and
2 Defense Counsel with summary information updating them as to the number of validated and timely
3 objections and Opt Out requests. The Settlement Administrator will serve on Class Counsel and
4 Defense Counsel via e-mail date-stamped copies of the original Opt Out requests and objections no
5 later than seven (7) days after their receipt. The Settlement Administrator will provide Class Counsel
6 with proof of mailing of the Class Notice, without listing individual Class Member names.

7 No later than thirty (30) days prior to the Final Approval and Fairness Hearing, the Settlement
8 Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary
9 information regarding: (a) the total amount of final Individual Settlement Amounts of each Class
10 Participant, without any identifying personal information; (b) the number of Class Participants to
11 receive such payments, and (c) the final number of Opt-Outs and objections.

12 Administrative Expenses are not anticipated to exceed \$8,250.00. Prior to the calculation and
13 distribution of the Individual Settlement Amounts, the Settlement Administrator shall calculate the
14 total Administrative Expenses through the conclusion of their services and such actual amount will be
15 deducted from the Gross Settlement Amount prior to the final calculation of the Individual Settlement
16 Amounts.

17 **7.2. NOTICE TO CLASS MEMBERS**

18 Notice shall be provided to Class Members in the following manner: Within twenty-one (21)
19 days after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with
20 an updated list of Class Members and members of the PAGA Settlement Class containing names, Social
21 Security numbers, dates of employment, last-known addresses, and phone numbers (the "Database").
22 The Database shall be marked "Confidential – Settlement Administrator's Eyes Only." At no point
23 shall Class Counsel receive or review a copy of this list.

24 Within twenty-eight (28) days following the Preliminary Approval Date, the Settlement
25 Administrator shall determine the number of workweeks worked by each Class Member, populate the
26 data for each Class Member accordingly, and send each Class Member the Class Notice via first-class,
27 United States mail. The Class Notice shall also contain an easily-understood statement alerting the
28

1 Class Members that, unless they elect to Opt Out of the Class Settlement, the Class Member is releasing
2 and waiving all Released Claims against the Released Parties.

3 The Class Notice will inform Class Members of their estimated share of the settlement and the
4 number of Workweeks. Class Members may dispute their respective Workweeks if they believe they
5 worked more weeks in the Class Period than Defendant's records show by submitting information to
6 the Settlement Administrator no later than forty-five (45) days after being mailed the Class Notice and
7 Share Form by the Settlement Administrator, which is the defined Response Deadline. The Settlement
8 Administrator will jointly work with Plaintiffs and Defendant to resolve the dispute in good faith. If
9 Plaintiffs and Defendant cannot agree over the workweeks to be credited, the Settlement Administrator
10 shall make the final decision based on the information presented by the Class Member and Defendant.

11 **7.3. OPT OUT PROCEDURE**

12 Class Members who do not timely Opt Out of the Class Settlement will be deemed to participate
13 in the Class Settlement and shall become Class Participants without having to submit a claim form or
14 take any other action. To Opt Out of the Class Settlement, the Class Member must submit a letter or
15 postcard to the Settlement Administrator. To be valid, a Request for Exclusion must be timely faxed,
16 emailed, or postmarked by the Response Deadline. The Opt Out request must state the Class Member's
17 name, address, telephone number, and signature. The Opt Out request should state something to the
18 effect of:

19 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *MARTIN*
20 *JAVIER HERNANDEZ, ET AL. V. ODYSSEY LANDSCAPING COMPANY, INC., ET*
21 *AL.* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE
22 SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS
23 SETTLEMENT OF THIS LAWSUIT AND WILL NOT BE RELEASING ANY
24 CLAIMS I MIGHT HAVE."

25
26 Any Opt Out request that is not faxed, emailed, or postmarked by the Response Deadline will
27 be invalid. If prior to the Response Deadline any Class Notice mailed to a Class Member is returned as
28 having been undelivered by the United States Postal Service, the Settlement Administrator shall

1 perform a skip trace search and seek an address correction for such Class Members, and a second Class
2 Notice will be sent to any new or different address obtained. Such Class Members shall have an
3 additional fourteen (14) days from the date of the mailing of the second Class Notice in which to Opt
4 Out, object, or dispute the information provided in the Share Form if the Response Deadline would
5 have otherwise passed prior to fourteen (14) days from the date of the mailing of the second Class
6 Notice.

7 It will be presumed that, if an envelope containing the Class Notice has not been returned within
8 thirty (30) days of the mailing, the Class Member received the Class Notice. At least twenty-one (21)
9 days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class
10 Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard
11 to the mailing of the Class Notice and its attempts to locate Class Members. The declaration shall
12 specify the number of Class Members to whom the Class Notice was sent and the number of Class
13 Members to whom the Class Notice was not delivered, as well as information relating to the number
14 of Opt-Outs and objectors. Class Counsel shall file this declaration with the Court.

15 If the Settlement Administrator determines that an Opt Out request returned by a Class Member
16 before the Response Deadline is deficient, then the Settlement Administrator shall mail a deficiency
17 letter to that Class Member identifying the problem. If a Class Member submits both a dispute and an
18 Opt Out request, the Settlement Administrator shall make reasonable attempts to clarify as if the Opt
19 Out request were deficient. If the Class Member fails to cure the deficiency, the Opt Out request shall
20 be disregarded and the claim will be paid, and the Class Member will become bound by the judgment.

21 Class Participants will be bound by the release set forth in the definition of “Released Class
22 Claims” provided in this Settlement Agreement.

23 A request to Opt Out of the Class Settlement shall *not* serve to exclude the Class Member from
24 participation in the PAGA Settlement Class. Opt-Outs shall still be entitled to their share of the PAGA
25 Payment. Class Members who are also members of the PAGA Settlement Class shall have no right or
26 ability to opt out of the portion of this Settlement Agreement releasing PAGA claims (as set forth in
27 the definition of “Released PAGA Claims” in the Agreement).

28

1 **7.4. OBJECTION PROCEDURE**

2 The Class Notice shall inform the Class Members of their right to object to the Class Settlement
3 if they do not Opt Out. Any Class Participants who wish to object to the Class Settlement may submit
4 a written objection to the Settlement Administrator no later than the Response Deadline. Only Class
5 Participants may object to the Settlement. The objection should include the case name and number and
6 must set forth, in clear and concise terms, a statement of the reasons why the objector believes that the
7 Court should find that the proposed Class Settlement is not in the best interest of the Settlement Class
8 and the reasons why the Class Settlement should not be approved, including the legal and factual
9 arguments supporting the objection. If an objector also wishes to appear at the Final Approval and
10 Fairness Hearing, in person or through an attorney, they may do so. The Settlement Administrator will
11 promptly serve copies of any objection or notice of intention to appear on Class Counsel and Defense
12 Counsel. Class Members wishing to make an objection may appear at the Final Approval and Fairness
13 Hearing, either in person or through a lawyer retained at their own expense.

14 **7.5. NOTICE OF FINAL JUDGMENT**

15 Within seven (7) days after the Court has held a Final and Fairness Approval Hearing and
16 entered a final order certifying the Class for settlement purposes only and approving the Class
17 Settlement, the Settlement Administrator will give notice of judgment to Class Members pursuant to
18 rule 3.771(b) of the California Rules of Court, by posting a copy of said order and final judgment on
19 its website at a web address to be included in the Class Notice.

20 **8. CLASS SETTLEMENT FUNDING AND DISTRIBUTION**

21 **8.1. ALLOCATION OF THE GROSS SETTLEMENT AMOUNT**

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

- 24 1. The Administrative Expenses, estimated not to exceed \$8,250.00;
- 25 2. Class Counsel's attorney fees not to exceed \$133,333.33;
- 26 3. Class Counsel's litigation costs and expenses not to exceed \$15,000.00;
- 27 4. The Incentive Awards to Plaintiffs, not to exceed \$7,500.00 for each Plaintiff, and not
28 to exceed \$15,000.00 in total; and

1 5. PAGA Payment of \$110,000.00.

2 For purposes of calculating the estimated Individual Settlement Amounts, the Settlement
3 Administrator shall calculate the estimated Net Settlement Amount based on the estimated values
4 provided above prior to sending Notice to the Class Members. Prior to final distribution, the Settlement
5 Administrator shall recalculate the final Net Settlement Amount based on the actual values of the
6 amounts in each category.

7 **8.2. CALCULATION OF THE INDIVIDUAL SETTLEMENT AMOUNTS FOR**
8 **CLASS PARTICIPANTS**

9 Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net
10 Settlement Amount. The portion of the Net Settlement Amount shall be distributed pro rata on a
11 “checks cashed” basis based on the proportional number of Workweeks by each Participating Class
12 Member during the Class Period.

13 Defendant will provide the Settlement Administrator with any information reasonably
14 necessary to perform the calculation of number of Workweeks for each Class Member (up to and
15 including providing the Settlement Administrator with the number of Workweeks according to its
16 business records), and any other reasonably required information the Settlement Administrator requests
17 to perform the calculations required under this Settlement Agreement. Defendant shall have no
18 responsibility for deciding the validity of the Individual Settlement Amounts or any other payments
19 made pursuant to this Settlement Agreement, shall have no involvement in or responsibility for the
20 determination or payment of Employee’s Taxes and Required Withholding, and shall have no liability
21 for any errors made with respect to such Employee’s Taxes and Required Withholding. Although the
22 Settlement Administrator will calculate and pay the standard Employee’s Taxes and Required
23 Withholding on the portion of the Individual Settlement Amounts constituting wages on their behalf,
24 Plaintiffs and Class Participants represent and understand that they shall be solely responsible for any
25 and all tax obligation associated with their respective Individual Settlement Amounts and Incentive
26 Awards.

1 **8.3. CALCULATION OF THE PAYMENTS FOR INDIVIDUAL MEMBERS OF**
2 **THE PAGA SETTLEMENT CLASS**

3 Subject to Court approval, the Parties agree that the PAGA Payment from the Gross Settlement
4 Amount will be designated for satisfaction of Plaintiffs' PAGA claim. Each member of the PAGA
5 Settlement Class shall be entitled to receive a portion of the PAGA Payment. The PAGA Payment shall
6 consist of the penalties pursuant to PAGA that the Parties have agreed is a reasonable sum to be paid
7 in settlement of the PAGA claims included in the Action, which is \$110,000.00. The PAGA Payment
8 is to be approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows:
9 seventy-five percent (75%) (i.e., \$82,500.00) to the LWDA and twenty-five percent (25%) (i.e.,
10 \$27,500.00) to the PAGA Settlement Class, regardless whether they request to be excluded from the
11 Settlement Class.

12 The portion of the PAGA Payment allocated to the PAGA Settlement Class shall be distributed
13 to the PAGA Settlement Class based on the pro rata number of pay periods worked by each particular
14 PAGA Settlement Class member during the PAGA Period as a proportion of all pay periods worked
15 by all PAGA Settlement Class members during the PAGA Period. Each member of the PAGA
16 Settlement Class, including each Plaintiff, shall be responsible for the payment of the Employee's
17 Taxes and Required Withholding with respect to their share of the PAGA Payment and shall hold
18 Defendant harmless from any and all liability with regard thereto.

19 Defendant will provide the Settlement Administrator with any information reasonably
20 necessary to perform the calculation of number of pay periods worked for each PAGA Settlement Class
21 member (up to and including providing the Settlement Administrator with the number of Pay Periods
22 according to its business records), and any other reasonably required information the Settlement
23 Administrator requests to perform the calculations required under this Settlement Agreement.
24 Defendant shall have no responsibility for deciding the validity of the individual payment amounts
25 allocated to each member of the PAGA Settlement Class or any other payments made pursuant to this
26 Settlement Agreement, shall have no involvement in or responsibility for the determination or payment
27 of Employee's Taxes and Required Withholding, and shall have no liability for any errors made with
28 respect to such Employee's Taxes and Required Withholding.

1 The members of the PAGA Settlement Class shall be solely responsible for any and all tax
2 obligation associated with their respective shares of the PAGA Payment.

3 **8.4. TIME FOR PAYMENT OF ATTORNEY FEES AND EXPENSES**

4 The Settlement Administrator shall distribute to Class Counsel any attorney fees and expenses
5 approved by the Court no later than forty (40) days after the Effective Date.

6 **8.5. TIME FOR PAYMENT OF INCENTIVE AWARD**

7 The Settlement Administrator shall distribute to Plaintiffs the Incentive Award approved by the
8 Court no later than forty (40) days after the Effective Date.

9 **8.6. TIME FOR PAYMENT OF PAGA PAYMENT TO THE LWDA**

10 The Settlement Administrator shall distribute to the LWDA the portion of the PAGA Payment
11 due to it and approved by the Court no later than forty (40) days after the Effective Date.

12 **8.7. TIME FOR PAYMENT OF TAXES AND REQUIRED WITHHOLDING AND**
13 **INDIVIDUAL SETTLEMENT AMOUNTS**

14 The Settlement Administrator will be responsible for issuing to Plaintiff, Participating Class
15 Members, PAGA Settlement Class, and Class Counsel any W-2, 1099, or other tax forms as may be
16 required by law for all amounts paid pursuant to this Settlement. The Settlement Administrator will
17 also be responsible for forwarding all payroll taxes and penalties to the appropriate government
18 authorities. The Settlement Administrator shall mail the Individual Settlement Amount to each Class
19 Participant, by first-class United States mail, to the last-known address no later than forty (40) days
20 after the Effective Date. If the Settlement Administrator is not able to do so within the time period set
21 forth above, it shall so inform Class Counsel and Defense Counsel and provide an approximate date by
22 which the Employee's Taxes and Required Withholding shall be paid and the Individual Settlement
23 Amounts will be mailed. Under no circumstances shall the Settlement Administrator distribute checks
24 to Class Participants until all Individual Settlement Amounts have been considered, calculated, and
25 accounted for, and all of the remaining monetary obligations have been calculated and accounted for.

26 Within two hundred ten (210) days of mailing the Individual Settlement Amounts to Class
27 Participants, the Settlement Administrator shall file with the Court and provide to Class Counsel a
28 declaration of payment. If any Class Participant is deceased, payment shall be made payable to the

1 estate of that Class Member and delivered to the executor or administrator of that estate, unless the
2 Settlement Administrator has received an affidavit or declaration pursuant to California Probate Code
3 section 13101, in which case payment shall be made to the affiant(s) or declarant(s).

4 **8.8. NON-CASHED SETTLEMENT CHECKS**

5 Any funds associated with checks that have not been cashed within one hundred eighty (180)
6 days, will become void and the Individual Settlement Amount associated with the uncashed check will
7 be remitted pursuant to Code of Civil Procedure section 384 to the California State Controller for
8 deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed. The
9 Parties agree that this disposition results in no “unpaid residue” within the meaning of California Civil
10 Procedure Code section 384, as the entire Net Settlement Amount will be paid out to Class Participants,
11 whether or not they all cash their Individual Settlement Amount checks. Therefore, Defendant shall not
12 be required to pay any interest on said amount. For the purposes of determining whether Defendant
13 have met their financial obligation to pay the Individual Settlement Payment, Defendant will be deemed
14 to have fulfilled their obligation upon the mailing of the check to the Class Member, regardless of
15 whether such Class Member subsequently negotiates the check.

16 **8.9. DISPUTES REGARDING CLASS MEMBER WORKWEEKS DATA OR** 17 **PAYMENT OF INDIVIDUAL SETTLEMENT SHARES**

18 Class Member Workweeks, PAGA Settlement Member Pay Periods, and the corresponding
19 Individual Settlement Amounts and PAGA Payments shall be calculated using the employment and
20 payroll records of Defendant, which presumptively shall be deemed to be full, complete, and accurate
21 for purposes of this Settlement Agreement. To overcome that presumption, any Class Member
22 objecting to the accuracy of the number of Workweeks, Pay Periods, the amount of the Individual
23 Settlement Amount, or their portion of the PAGA Payment must submit documentary evidence, such
24 as pay stubs or other written employment records, to the Settlement Administrator. Each Class Member
25 may dispute the number of Workweeks, Pay Periods, their estimated Individual Settlement Amount, or
26 their portion of the PAGA Payment contained on their Class Notice (“Dispute”). Any such Dispute
27 must be mailed or faxed to the Settlement Administrator by the Class Member, postmarked or fax-
28 stamped on or before the Response Deadline. The Settlement Administrator shall immediately provide

1 copies of all disputes to counsel for Defendant, shall inform Class Counsel of the dispute without
2 disclosing the identity of the Class Member making the dispute, and shall immediately attempt to
3 resolve all such disputes directly with relevant Class Members with the assistance of Defendant,
4 Defense Counsel, and Class Counsel. If the dispute cannot be resolved, it shall be submitted to the
5 Settlement Administrator for its final, non-appealable decision. The Settlement Administrator shall use
6 its best efforts to resolve all such disputes prior to the Effective Date. If, however, a dispute arises or
7 is not resolved until after the Settlement Amount has been distributed, the initial calculation shall stand
8 (as Defendant shall be under no obligation to pay any amounts in excess of the Gross Settlement
9 Amount under this Settlement Agreement).

10 **9. NULLIFICATION OF THIS SETTLEMENT AGREEMENT**

11 **9.1. NON-APPROVAL OF THIS SETTLEMENT AGREEMENT**

12 The Class Settlement and conditional class certification shall be considered null and void, and
13 neither the Class Settlement, conditional class certification, nor any of the related negotiations or
14 proceedings, shall be of any force or effect, and all Parties to the Class Settlement shall stand in the
15 same position, without prejudice, as if the Class Settlement had been neither entered into nor filed with
16 the Court, if any of the following occur: **(a)** the Court should for any reason fail to approve this
17 Settlement Agreement in the form agreed to by the Parties; **(b)** the Court should for any reason fail to
18 enter a judgment with prejudice of the Action, or **(c)** the approval of the Class Settlement and judgment
19 is reversed, modified, or declared or rendered void. Notwithstanding the foregoing, the Parties may
20 attempt in good faith to cure any perceived defects in this Settlement Agreement to facilitate approval.

21 **9.2. DEFENDANT'S RIGHTS TO VOID CLASS SETTLEMENT**

22 If 10% or more members of the Settlement Class timely submit Opt Out requests, Defendant
23 shall have the right (but not the obligation) to void this Settlement Agreement within 15 business days
24 of the end of the Response Deadline. In such event the Parties shall revert to *status quo ante* prior to
25 this Agreement.

26 **9.3. ESCALATOR PROVISION**

27 Defendant estimates that the Class Members worked a total of approximately 29,794
28 workweeks during the Class Period. If the number of Workweeks worked by the Class Members as of

1 the date of full execution of this Settlement Agreement is greater than 10% above that estimated by
2 Defendant, then the portion of the Gross Settlement Amount attributable to non-PAGA claims (i.e., the
3 Gross Settlement Amount less the PAGA Penalties) shall be increased proportionately for each
4 additional Workweek above the 10% buffer.

5 Defendant estimates that the PAGA Settlement Class Members worked a total of approximately
6 9,248 pay periods during the PAGA Period. If the number of Pay Periods worked by the PAGA
7 Settlement Class Members as of the date of this Settlement Agreement is greater than 10% above that
8 estimated by Defendant, then the portion Gross Settlement Amount attributable to PAGA claims (i.e.,
9 the PAGA Penalties) shall be increased proportionately for each additional Pay Period worked above
10 the 10% buffer.

11 If this provision is triggered so as to increase the Gross Settlement Amount, the Parties agree
12 that the Class Attorney Fees will increase proportionally such that the total amount of attorneys' fees
13 remains one-third of the Gross Settlement Amount after the upward adjustment required by this
14 provision is implemented.

15 **9.4. INVALIDATION**

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

19 **9.5. STAY ON APPEAL**

20 If a timely appeal from the approval of the Class Settlement and judgment, the judgment shall
21 be stayed, and Defendant shall not be obligated to fund the Gross Settlement Amount or take any other
22 actions required by this Settlement Agreement until all appeal rights have been exhausted by operation
23 of law.

24 **10. MOTIONS FOR COURT APPROVAL**

25 **10.1. PRELIMINARY APPROVAL**

26 As soon as practicable after execution of this Settlement Agreement, Class Counsel will submit
27 this Settlement Agreement to the Court along with a Motion for Preliminary Approval of the Class
28 Settlement. Defense Counsel shall be provided with a draft of this Motion for comment and revision at

1 least five (5) days prior to its submission. Each party shall cooperate to present the Class Settlement to
2 the Court for preliminary approval in a timely fashion.

3 **10.2. FINAL APPROVAL**

4 The Final Approval and Fairness Hearing shall be held before the Court. At the Final Approval
5 and Fairness Hearing, Plaintiffs shall move the Court for the entry of the final order certifying the
6 Settlement Class for settlement purposes only and approving the Class Settlement as being fair,
7 reasonable, and adequate to the Class Participants within the meaning of California Rules of Court,
8 Rule 3.769, subdivisions (c), (d) and (e), and for the entry of a final judgment of the Action consistent
9 with the terms of the Class Settlement and rule 3.769, subdivision (h), of the California Rules of Court.
10 Defense Counsel shall be provided with a draft of this Motion for comment and revision at least five
11 (5) days prior to its submission. Class Counsel and Defense Counsel shall submit to the Court such
12 pleadings and/or evidence as may be required for the Court's determination.

13 **11. RELEASES AND WAIVERS**

14 **11.1. RELEASE OF CLAIMS BY THE SETTLEMENT CLASS**

15 Upon the Effective Date, the Releasing Parties shall be deemed to each release the Released
16 Parties, and each of them, of and from any and all Released Class Claims arising during the Class
17 Period. It is the desire of the Parties and the Releasing Parties to fully, finally, and forever settle,
18 compromise, and discharge the Released Class Claims. Each of the Releasing Parties, including each
19 Class Participant, will be bound by the release as a result of the Class Settlement and to the terms of
20 the final judgment and the satisfaction of such judgment.

21 Upon the Effective Date, the PAGA Settlement Class, together and individually, on their behalf
22 and on behalf of their respective heirs, executors, administrators, agents, and attorneys, shall fully and
23 forever release and discharge all of the Released Parties, or any of them, from each of the Released
24 PAGA Claims during the PAGA Period. In addition, on the Effective Date, the PAGA Settlement
25 Class, together and individually, will be permanently enjoined and forever barred from prosecuting any
26 of the Released PAGA Claims against any of the Released Parties.

27 Class Participants will be deemed to have acknowledged and agreed that their claims for wages
28 and/or penalties in the Action are disputed, and that their Individual Settlement Amount and their

1 portion of the PAGA Payment constitutes payment of all sums allegedly due to them. Class Participants
2 will be deemed to have acknowledged and agreed that California Labor Code section 206.5 is not
3 applicable to the Individual Settlement Amount. That section provides in pertinent part as follows:

4 “An employer shall not require the execution of a release of a claim or right on account
5 of wages due, or to become due, or made as an advance on wages to be earned, unless
6 payment of those wages has been made.”
7

8 **11.2. RELEASE OF CLAIMS BY PLAINTIFFS**

9 In consideration for their Incentive Awards, Plaintiffs, on behalf of themselves and their
10 dependents, heirs and assigns, beneficiaries, devisees, legatees, executors, administrators, agents,
11 trustees, conservators, guardians, personal representatives, and successors-in-interest, whether
12 individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other
13 capacity, shall and does hereby forever release, discharge and agree to hold harmless the Released
14 Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements,
15 controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and
16 expenses (including attorney fees and costs), known or unknown, at law or in equity, which they may
17 now have or may have after the signing of this Settlement Agreement, arising out of or in any way
18 connected with their employment with Defendant including, the Released Claims, claims that were
19 asserted or could have been asserted in the Complaint, and any and all transactions, occurrences, or
20 matters between the Parties occurring prior to the date this Settlement Agreement is fully executed.
21 Without limiting the generality of the foregoing, this release shall include, but not be limited to, any
22 and all claims under: **(a)** the Americans with Disabilities Act; **(b)** Title VII of the Civil Rights Act of
23 1964; **(c)** the Civil Rights Act of 1991; **(d)** 42 U.S.C. § 1981; **(e)** the Age Discrimination in
24 Employment Act; **(f)** the Fair Labor Standards Act; **(g)** the Equal Pay Act; **(h)** the Employee
25 Retirement Income Security Act, as amended; **(i)** the Consolidated Omnibus Budget Reconciliation
26 Act; **(j)** the Rehabilitation Act of 1973; **(k)** the Family and Medical Leave Act; **(l)** the Civil Rights Act
27 of 1966; **(m)** the California Fair Employment and Housing Act; **(n)** the California Constitution; **(o)** the
28 California Labor Code; **(p)** the California Government Code; **(q)** the California Civil Code; and **(r)** any

1 and all other federal, state, and local statutes, ordinances, regulations, rules, and other laws, and any
2 and all claims based on constitutional, statutory, common law, or regulatory grounds as well as any
3 other claims based on theories of wrongful or constructive discharge, breach of contract or implied
4 contract, fraud, misrepresentation, promissory estoppel, or intentional infliction of emotional distress,
5 negligent infliction of emotional distress, or damages under any other federal, state, or local statutes,
6 ordinances, regulations, rules, or laws. This release is for any and all relief, no matter how denominated,
7 including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory damages,
8 tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and attorney
9 fees and costs, and Plaintiffs hereby forever releases, discharges and agrees to hold harmless Defendant
10 and the Released Parties from any and all claims for attorney fees and costs arising out of the matters
11 released in this Settlement Agreement.

12 Plaintiffs specifically acknowledge that they are aware of and familiar with the provisions of
13 California Civil Code section 1542, which provides as follows:

14 **“A general release does not extend to claims that the creditor or releasing party**
15 **does not know or suspect to exist in his or her favor at the time of executing the**
16 **release and that, if known by him or her, would have materially affected his or her**
17 **settlement with the debtor or released party.”**
18

19 Plaintiffs, being aware of California Civil Code section 1542, hereby expressly waive and
20 relinquish all rights and benefits they may have under section 1542 as well as any other statutes or
21 common law principles of a similar effect. Plaintiffs may hereafter discover facts in addition to or
22 different from those which they now know or believe to be true with respect to the subject matter of all
23 the claims referenced herein, but agrees that, upon the Effective Date, Plaintiffs shall and hereby does
24 fully, finally, and forever settle and release any and all claims against the Released Parties, known or
25 unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have
26 been asserted upon any theory of law or equity without regard to the subsequent discovery of existence
27 of such different or additional facts.
28

1 **11.3. TAX LIABILITY**

2 The Parties make no representation as to the tax treatment or legal effect of the payments called
3 for hereunder, and Plaintiffs and Participating Class Members are not relying on any statement,
4 representation, or calculation by Defendant or by the Settlement Administrator in this regard. Each
5 Participating Class Member shall have sole responsibility for any and all tax consequences applicable
6 to any amounts they are paid pursuant to the Settlement. No opinion regarding the tax consequences of
7 this Settlement to any Participating Class Member is being given, or will be given, by the Defendant,
8 counsel for the Defendant, any other Released Party, or Class Counsel. Participating Class Members
9 must consult their own tax advisors regarding the tax consequences of this Settlement, including but
10 not limited to any payments provided or tax reporting obligations. The Defendant, the Released Parties,
11 counsel for the Defendant, and Class Counsel shall have no liability or responsibility whatsoever for
12 any tax consequences resulting from payments made pursuant to the Settlement.

13 **11.4. CIRCULAR 230 DISCLAIMER**

14 Each party to this Settlement Agreement (for purposes of this section, the “Acknowledging
15 Party”; and each party to this Agreement other than the Acknowledging Party, an “Other Party”)
16 acknowledges and agrees that **(1)** no provision of this Settlement Agreement, and no written
17 communication or disclosure between or among the parties or their attorneys and other advisers, is or
18 was intended to be, nor shall any such communication or disclosure constitute or be construed or be
19 relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31
20 C.F.R. Part 10); **(2)** the Acknowledging Party **(a)** has relied exclusively upon her or its own
21 independent legal and tax advisers for advice (including tax advice) in connection with this Settlement
22 Agreement, **(b)** has not entered into this Settlement Agreement based upon the recommendation of any
23 other party or any attorney or advisor to any other party, and **(c)** is not entitled to rely upon any
24 communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty that
25 may be imposed on the Acknowledging Party; and **(3)** no attorney or advisor to any other party has
26 imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies
27 (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party
28

1 of the tax treatment or tax structure of any transaction, including any transaction contemplated by this
2 Settlement Agreement.

3 **12. DUTIES OF THE PARTIES**

4 **12.1. MUTUAL FULL COOPERATION**

5 The Parties agree to cooperate fully with one another to accomplish and implement the terms
6 of this Settlement Agreement. Such cooperation shall include, but not be limited to, execution of such
7 other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms
8 of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated
9 by this Settlement Agreement and any other efforts that may become necessary by court order or
10 otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable
11 after execution of this Settlement Agreement, Class Counsel, with the cooperation of Defendant and
12 Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final approval of
13 this Settlement Agreement.

14 **12.2. DUTY TO SUPPORT AND DEFEND THE CLASS SETTLEMENT**

15 The Parties agree to abide by all of the terms of this Settlement Agreement in good faith and to
16 support the Class Settlement fully and to use their best efforts to defend this Class Settlement from any
17 legal challenge, whether by appeal or collateral attack.

18 **12.3. DUTIES PRIOR TO COURT APPROVAL**

19 Class Counsel shall promptly submit this Settlement Agreement to the Court for preliminary
20 approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly
21 upon execution of this Settlement Agreement, Class Counsel shall apply to the Court for the entry of a
22 preliminary order scheduling a hearing on the question of whether the proposed Class Settlement
23 should be approved as fair, reasonable, and adequate as to the Class Members, approving as to form
24 and content the proposed Class Notice and Share Form attached hereto as **Exhibit 1** and **Exhibit 2**,
25 respectively, and directing the mailing of the Class Notice to Class Members. While Defendant can
26 reserve their right to object to facts or assertions made in the moving papers, Defense Counsel shall
27 file a notice of non-opposition to the granting of the motion for preliminary approval or join in the
28 motion.

1 **13. MISCELLANEOUS PROVISIONS**

2 **13.1. VOIDING THIS SETTLEMENT AGREEMENT**

3 Pending Court approval and other than as provided herein, if any of the material conditions set
4 forth in this Settlement Agreement are not met and satisfied, this Settlement Agreement may, at the
5 option of either Plaintiffs or Defendant, be ineffective, void, and of no further force and effect, and
6 may not be used or be admissible in any subsequent proceeding, either in this Court or in any other
7 court or forum. If either Party decides to void the Settlement Agreement, then the Settlement
8 Agreement and conditional class certification shall be considered void, and neither the Settlement
9 Agreement, conditional class certification, nor any of the related negotiations or proceedings, shall be
10 of any force or effect, and the Parties shall stand in the same position, without prejudice, as if this
11 Settlement Agreement had been neither entered into nor filed with the Court. Should any Party choose
12 to void the Class Settlement under this subsection, such Party shall be responsible for all Settlement
13 Administrator fees and costs actually incurred.

14 **13.2. DIFFERENT FACTS**

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

21 **13.3. NO PRIOR ASSIGNMENTS**

22 The Parties represent, covenant, and warrant that they have not directly or indirectly assigned,
23 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any
24 portion of any liability, claim, demand, action, cause of action, or right herein released and discharged
25 except as set forth herein.

26 **13.4. NON-ADMISSION**

27 Nothing in this Settlement Agreement shall be construed as or deemed to be an admission by
28 any Party of any liability, culpability, negligence, or wrongdoing toward any other Party, or any other

1 person, and the Parties specifically disclaim any liability, culpability, negligence, or wrongdoing
2 toward each other or any other person. Each of the Parties has entered into this Settlement Agreement
3 with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses,
4 and contingencies. Nothing herein shall constitute any admission by Defendant of wrongdoing or
5 liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute any
6 admission by Defendant regarding the merits of the Claims in this Action, including but not limited to
7 claims for unpaid wages or violations under California or federal law. Nothing herein shall constitute
8 an admission by Defendant that the Action was properly brought as a class or representative action
9 other than for settlement purposes. To the contrary, Defendant has denied and continue to deny each
10 and every material factual allegation and all Claims. To this end, the Class Settlement of the Action,
11 the negotiation and execution of this Settlement Agreement, and all acts performed or documents
12 executed pursuant to or in furtherance of this Settlement Agreement or the Class Settlement are not,
13 shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or
14 liability on the part of Defendant or of the truth of any of the factual allegations in the Complaint in the
15 Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence of
16 any fault or omission on the part of Defendant in any civil, criminal, or administrative proceeding in
17 any court, administrative agency, or other tribunal.

18 **13.5. NON-EVIDENTIARY USE**

19 Neither this Agreement nor any of its terms, nor any statements or conduct in the negotiation
20 or drafting of it, shall be offered or used as evidence by Plaintiffs, any Class Member (including any
21 individual who requested to be excluded from the Settlement Class), Defendant, or its, her, his, or their
22 respective counsel, in the Action, except as is reasonably necessary to effectuate the Settlement
23 Agreement's purpose and terms. This Settlement Agreement may, however, be used by Defendant and
24 the Released Parties to prove or defend against any claim released herein by any Class Member in any
25 judicial, quasi-judicial, administrative, or governmental proceeding.

26 **13.6. NO UNDUE PUBLICITY**

27 Neither Plaintiffs nor Class Counsel shall cause to be publicized, directly or indirectly, any
28 discussion resulting in or the existence of this Agreement or its terms in any type of media, including,

1 but not limited to, speeches, press conferences, press releases, interviews, television or radio
2 broadcasts, newspapers, website postings, messages on the Internet, Facebook, Twitter, Instagram, or
3 any other social media. Breach of this provision shall entitle Defendant, in the exercise of its sole
4 discretion, to nullify this Agreement at any time before the Effective Date. Plaintiffs and Class Counsel
5 agree that they shall not contact the press regarding the claims in the Action and further, that if they
6 are contacted by the press, Plaintiffs or Class Counsel shall respond only that the matter has settled.
7 Should either Plaintiff at any time breach this provision, the breaching Plaintiff(s) shall forfeit to
8 Defendant the full amount of any allocation of the settlement funds to them. Without limitation by the
9 foregoing, Defendant also may enforce this provision through an action for injunctive relief. Plaintiffs
10 waive any obligation by Defendant to file a bond in connection with any such action. This provision
11 does not apply to any publications ordered by the Court..

12 **13.7. NON-RETALIATION**

13 Defendant understands and acknowledges that it has a legal obligation to not retaliate against
14 any Class Member who elects to participate in the Class Settlement or elects to Opt Out of the Class
15 Settlement. Defendant will not discourage Class Members who are employees, directly or indirectly,
16 from making claims, opting out, or objecting to the Class Settlement. None of the Parties, or their
17 respective attorneys or agents, shall solicit or encourage any Class Members, directly or indirectly, to
18 Opt Out of the Class Settlement.

19 **13.8. CONSTRUCTION**

20 The Parties agree that the terms and conditions of this Settlement Agreement are the result of
21 lengthy, intensive, arms-length, non-collusive negotiations between the Parties and that this Settlement
22 Agreement is not to be construed in favor of or against any party by reason of the extent to which any
23 party or its counsel participated in the drafting of this Settlement Agreement. If any of the dates in this
24 Settlement Agreement fall on a weekend, bank or court holiday, the time to act shall be extended to the
25 next business day.
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1 **13.9. GOVERNING LAW**

2 This Settlement Agreement is intended to and shall be governed by the laws of the State of
3 California, without regard to conflict of law principles, in all respects, including execution,
4 interpretation, performance, and enforcement.

5 **13.10. NOTICES**

6 Except for Class Member notices required to be made by the Settlement Administrator, all
7 notices or other communications required or permitted under this Settlement Agreement shall be in
8 writing and shall be sufficiently given if delivered in person to the party or their counsel by U.S.
9 certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the address of the
10 party appearing in this Settlement Agreement.

11 **13.11. CAPTIONS AND INTERPRETATIONS**

12 Section titles or captions contained herein are inserted as a matter of convenience and for
13 reference only and in no way define, limit, extend, or describe the scope of this Settlement Agreement
14 or any provision thereof.

15 **13.12. MODIFICATION**

16 This Settlement Agreement may not be changed, altered, or modified, except in writing signed
17 by the Parties or the Parties' counsel on their behalf. If preliminary or final approval of this Settlement
18 Agreement has been granted by the Court, then any such amendments or modifications to this
19 Settlement Agreement shall be approved by the Court. This Settlement Agreement may not be
20 discharged except by performance in accordance with its terms or by a writing signed by the Parties.

21 **13.13. INTEGRATION CLAUSE**

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

1 **13.14. SUCCESSORS AND ASSIGNS**

2 This Settlement Agreement shall be binding on and inure to the benefit of the Parties and Class
3 Members (excluding only persons who timely Opt Out) and their respective present and former heirs,
4 trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees,
5 insurers, attorneys, accountants, auditors, advisors, consultants, pension plans, welfare benefit plans,
6 fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors,
7 successors, and assigns.

8 **13.15. CORPORATE SIGNATORIES**

9 Any person executing this Settlement Agreement or any such related document on behalf of a
10 corporate signatory or on behalf of a partnership hereby warrants and promises, for the benefit of all
11 Parties hereto, that such person has been duly authorized by such corporation or partnership to execute
12 this Settlement Agreement or any such related document.

13 **13.16. EXECUTION IN COUNTERPARTS**

14 This Settlement Agreement shall become effective upon its execution by all of the undersigned.
15 The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall
16 have the same force and effect as if all Parties had signed the same instrument.

17 **13.17. ATTORNEY FEES, COSTS, AND EXPENSES**

18 Except as otherwise specifically provided for herein, each party shall bear her or its own
19 attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising out of the Action
20 and shall not seek reimbursement thereof from any other party to this Settlement Agreement.

21 **13.18. ACTION TO ENFORCE AGREEMENT**

22 In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be
23 entitled to recover her or its attorney fees and costs.

24 **14. EXECUTION**

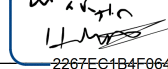
25 The Parties and their counsel have executed this Settlement Agreement on the date below their
26 signatures or the signature of their representatives. The date of this Settlement Agreement shall be the
27 date of the latest signature.
28

APPROVAL AND EXECUTION BY PARTIES

CLASS REPRESENTATIVES:

Dated: 3/23/2023 _____

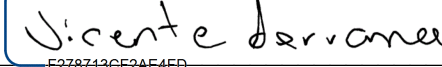
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Martin Javier Hernandez
Plaintiff and Class Representative

Dated: 3/23/2023 _____

DocuSigned by:



F278743GF2AE4FD...
Vicente Serrano
Plaintiff and Class Representative

DEFENDANT:

Dated: _____

Odyssey Landscaping Company, Inc.

By: _____

Title: _____

CLASS COUNSEL:

Dated: 3/23/2023 _____

Melmed Law Group P.C.

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Kyle D. Smith
Attorneys for Plaintiffs

DEFENDANT'S COUNSEL:

APPROVAL AND EXECUTION BY PARTIES

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CLASS REPRESENTATIVES:

Dated: _____

Martin Javier Hernandez
Plaintiff and Class Representative

Dated: _____

Vicente Serrano
Plaintiff and Class Representative

DEFENDANT:

Dated: 3/20/23

Odyssey Landscaping Company, Inc.



By: Karim Khurana

Title: PRESIDENT

CLASS COUNSEL:

Dated: _____

Melmed Law Group P.C.

Kyle D. Smith
Attorneys for Plaintiffs

DEFENDANT'S COUNSEL:

Dated: March 20, 2023

Seyfarth Shaw LLP



Ari Hersher
Ryan McCoy
Parnian Vafaenia
Attorneys for Defendant

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EXHIBIT 1

Notice of Proposed Class Action Settlement

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

MARTIN JAVIER HERNANDEZ and
VICENTE SERRANO, individuals on behalf of
themselves, the State of California, as private
attorneys general, and on behalf of all others
similarly situated,

Plaintiffs,

v.

ODYSSEY LANDSCAPING COMPANY,
INC., a California Corporation; ODYSSEY
LANDSCAPE COMPANY INC., an Unknown
Entity; and DOES 1 TO 50,

Defendants.

Case No.: STK-CV-UOE-2021-11109

**Notice of Proposed Class Action and PAGA
Settlement**

A court authorized this notice. This is not a solicitation from a lawyer.

1 **NOTICE OF PROPOSED CLASS ACTION AND PAGA SETTLEMENT**

2 *You may be eligible to receive a settlement payment. Please read this notice carefully.*

3 A proposed class action settlement agreement (the “Settlement”) has been reached between:

4 (1) Plaintiffs Martin Javier Hernandez and Vicente Serrano (collectively “Plaintiffs”), individually and
5 in their representative capacity on behalf of a group of prospective class members defined below, and
6 as private attorneys general on behalf of the State of California; and (2) Defendant Odyssey
7 Landscaping Company, Inc. (“Defendant”). The Settlement resolves disputed claims against Defendant
8 arising out of its alleged compensation practices during the period from December 7, 2017, through
9 [the earlier of: April 18, 2023, or the date of preliminary approval of the settlement] (the “Class Period”)
10 as applied to all current or former hourly-paid or non-exempt employees employed by Defendant in
11 the State of California during the Class Period (“Class Members”).

12 The Settlement also resolves disputed claims against Defendant arising under the Private
13 Attorneys’ General Act (“PAGA”) as applied to all current and former hourly-paid or non-exempt
14 employees employed by Defendant in the State of California at any time from December 3, 2020,
15 through the earlier of April 18, 2023, or the date of preliminary approval of the settlement (“PAGA
16 Members”).

17 The Court has granted preliminary approval of the Settlement and ordered this notice to be sent
18 to you because you may be entitled to money under the Settlement and because the Settlement affects
19 your legal rights. You have received this notice because Defendant’s records indicate that you are a
20 Class Member and/or PAGA Member, and therefore entitled to a payment from the settlement.

21 **NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE**
22 **SETTLEMENT:** If you are a Class Member (as defined above) and received this notice, you are
23 automatically included in the Settlement and do not need to take any further action to receive a
24 payment. If you do not take any action, you will release the claims described below.

25 **1. DESCRIPTION OF THE LAWSUIT**

26 Plaintiffs, individually and in their representative capacity on behalf of the Class Members, and
27 as private attorneys general on behalf of the State of California, are pursuing a lawsuit against
28 Defendant in the Superior Court of the State of California for the County of San Joaquin in the matter

1 of *Martin Javier Hernandez, et al. v. Odyssey Landscaping Company, Inc., et al.*, case number **STK-**
2 **CV-UOE-2021-11109** (the “Action”). The Action alleges claims for: **(1)** failure to pay minimum wage
3 for all hours worked; **(2)** failure to pay proper overtime wages; **(3)** failure to provide compliant rest
4 periods and pay missed rest break premiums; **(4)** failure to provide compliant meal periods and pay
5 missed meal period premiums; **(5)** failure to maintain accurate employment records; **(6)** failure to pay
6 timely wages during employment; **(7)** failure to pay all wages due and owing at separation; **(8)** failure
7 to reimburse business expenses; **(9)** failure to provide complete and accurate wage statements; and
8 **(10)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation
9 of California’s Unfair Competition Law. As part of the Action, Plaintiffs also sought civil penalties
10 under PAGA for the Labor Code allegations described above.

11 Defendant denies all liability, denies all allegations in the Action, denies class certification
12 would be appropriate, and has raised various defenses to the claims. Defendant asserts that it fully
13 complied with all applicable wage and hour laws, and contends that civil penalties under PAGA are
14 not warranted. Defendant also denies that the Action is suitable for class certification. Defendant has
15 entered the Settlement solely for purposes of resolving this dispute to avoid costly, disruptive, and
16 time-consuming litigation and does not admit to any wrongdoing or liability. By agreeing to settle,
17 Defendant is not admitting liability on any of the factual allegations or claims in the case or that the
18 case can or should proceed as a class action. Defendant has agreed to settle the case as part of a
19 compromise with Plaintiff.

20 The Court has not ruled on the merits in the Action. By approving the Settlement and issuing
21 this notice, the Court is *not* suggesting which side would win or lose the case if it went to trial or
22 whether the claims are suitable for class certification. To avoid the additional expense, inconvenience,
23 and risk of continued litigation, however, Plaintiffs and Defendant (the “Parties”) have concluded that
24 it is in their respective best interests and the interests of the Class Members and PAGA Members to
25 settle the Action on the terms summarized in this notice. The Settlement was reached after Defendant
26 provided extensive information and documents to Plaintiffs’ counsel, and after lengthy arms-length
27 non-collusive negotiations between the Parties, including mediation with an experienced and well-
28 respected mediator in California.

1 Plaintiffs and Plaintiffs’ counsel—Jonathan Melmed, Kyle Smith, and Joanne Kim of Melmed
2 Law Group P.C. (“Class Counsel”)—support the Settlement. Among the reasons for support are the
3 defenses to liability potentially available to Defendant, the risk of denial of class certification, the
4 inherent risk of trial on the merits and any resulting appeals, and the delays and uncertainties associated
5 with litigation. Plaintiffs and Class Counsel believe that the settlement described in this notice is fair,
6 adequate, reasonable, and in the best interests of Plaintiffs, the Class Members, and PAGA Members,
7 and the State of California.

8 Under the Settlement, the following settlement class will be certified under California law: *all*
9 *individuals who are or were employed by Defendant as non-exempt employees in California during the*
10 *Class Period*. The “Class Period” is defined as the period from December 7, 2017, through [the earlier
11 of: April 18, 2023, or the date of preliminary approval of the settlement]. The Settlement provides for
12 a gross settlement amount of \$400,000.00, a share of which is to be distributed to the Class Members
13 based on the pro rata number of weeks worked by the Class Members during the Class Period as a
14 proportion of all weeks worked by all Class Members. In exchange for their share of the settlement
15 amount, all participating Class Members will be deemed to have released Defendant from liability on
16 the terms described in this notice.

17 On [date of preliminary approval], the Court preliminarily approved the Settlement and
18 conditionally certified the settlement class. This notice is being sent to you because Defendant’s records
19 indicate that you worked for Defendant during the Class Period and that you meet the definition
20 required to be treated as a Class Member.

21 **2. IF YOU ARE STILL EMPLOYED BY DEFENDANT, THIS SETTLEMENT WILL**
22 **NOT AFFECT YOUR EMPLOYMENT.**

23 Defendant will not retaliate against you for any actions you take with respect to the proposed
24 Settlement, including because of the Class Member’s participation or decision not to participate in the
25 Settlement. .

26 **3. TERMS OF THE SETTLEMENT**

27 Defendant has agreed to pay \$400,000.00 (the “Gross Settlement Amount”) to resolve the
28 claims in the Action. The Parties agreed to the following payments from the Gross Settlement Amount:

- 1 1. **Settlement Administration Costs.** The Court has approved Phoenix Settlement
2 Administrators to act as the “Settlement Administrator,” who is sending this notice to
3 you and will perform many other duties relating to the Settlement. Under the Settlement,
4 the cost of administering the settlement will be paid from the Gross Settlement Amount.
5 Those costs are not expected to exceed \$8,250.00.
- 6 2. **Attorneys’ Fees and Expenses.** Class Counsel have been prosecuting the Action on
7 behalf of the Class Members on a contingency fee basis (that is, without being paid any
8 money to date) and have been paying all litigation costs and expenses. To date, the
9 Parties have aggressively litigated many aspects of the case including investigation,
10 settlement efforts, and a full-day mediation session. The Court will determine the actual
11 amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Gross
12 Settlement Amount. Class Members are not personally responsible for any of Class
13 Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of one-third of
14 the Gross Settlement Amount (i.e., \$133,333.33) as reasonable compensation for the
15 work Class Counsel performed and will continue to perform in the Action. Class
16 Counsel also will ask for reimbursement of up to \$15,000.00 for the costs Class Counsel
17 incurred in connection with the Action.
- 18 3. **Service Payment to Class Representatives.** Class Counsel will ask the Court to
19 provide a service payment to Plaintiffs in the amount of \$7,500.00 for Martin Javier
20 Hernandez and \$7,500.00 for Vicente Serrano to compensate them for their efforts on
21 behalf of the Class Members in the Action, including assisting in the investigation and
22 consulting with Class Counsel and providing crucial documents to Class Counsel.
23 Plaintiffs also will receive a share of the Settlement as a Class Member.
- 24 4. **PAGA Payment.** The Parties have agreed on a reasonable sum to be paid in settlement
25 of the PAGA claims included in the Action, which is \$110,000.00. The PAGA Payment
26 is to be approved by the Court pursuant to Labor Code section 2699 and is to be
27 distributed as follows: seventy-five percent (75%) (i.e., \$82,500.00) to the LWDA and
28 twenty-five percent (25%) (i.e., \$27,500.00) to the PAGA Members. The portion of the

1 PAGA Payment allocated to PAGA Members shall be distributed to the PAGA
2 Members based on the pro rata number of pay periods worked by each particular PAGA
3 Member during the PAGA Period as a proportion of all pay periods worked by all
4 PAGA Members. With respect to the PAGA Payment and any payments made to PAGA
5 Members, all such payments shall be treated as payments owing for penalties and
6 interest thereon and shall not be considered wages.

7 After deducting the amounts above, the balance of the settlement amount will form the “Net
8 Settlement Amount” for distribution to the Class Members.

9 **4. DISTRIBUTION OF THE SETTLEMENT TO THE CLASS MEMBERS**

10 Each eligible Class Member who does not request exclusion from the Settlement will be deemed
11 a “Class Participant” and will receive a share from the Net Settlement Amount which will be distributed
12 pro rata based on the proportional number of weeks worked by each Class Member during the Class
13 Period (the “Individual Settlement Amount”). If any Class Member requests exclusion from the
14 Settlement, his or her share will be distributed to the remaining Class Participants.

15 Thirty percent (30%) of each Individual Settlement Amount will constitute payment in the form
16 of wages (and each Class Participant will be issued an IRS Form W-2 for such payment to him or her),
17 and seventy percent (70%) of each Individual Settlement Amount will constitute penalties and interest
18 (and each Class Participant will be issued an IRS Form 1099 for such payment to him or her).

19 Defendant, or its proxies, shall take all usual and customary deductions from the Individual
20 Settlement Amount payments that are distributed as wages, including, but not limited to, state and
21 federal tax withholding, disability premiums, and unemployment insurance premiums. There will be
22 no deduction taken from the interest or penalty distribution—it will, however, be reported on IRS Form
23 1099 as income. Class Participants are responsible for the proper income tax treatment of their
24 Individual Settlement Amount. The Settlement Administrator, Defendant and its counsel, and Class
25 Counsel cannot provide tax advice. Accordingly, Class Members should consult with their tax advisors
26 concerning the tax consequences and treatment of payments they receive under the Settlement.

27 Settlement checks will be mailed to all Class Participants after the Court grants final approval
28 of the Settlement and judgment is entered.

1 **5. THE RELEASE OF CLASS AND PAGA CLAIMS**

2 If the Court approves the Settlement, the Court will enter judgment and the Settlement will bind
3 all Class Participants. The Class Participants will then be barred from bringing any “Released Class
4 Claims” against the “Released Parties” as those terms are defined below.

5 The “Released Parties” are Defendant and all of Defendant’s present and former parent
6 companies, subsidiaries, affiliates, owners, investors, shareholders, officers, directors, employees,
7 agents, servants, registered representatives, attorneys, insurers, successors and assigns. This includes
8 Odyssey Holdings, Inc. and its subsidiaries, affiliates, owners, investors, shareholders, officers,
9 directors, employees, agents, servants, registered representatives, attorneys, insurers, successors and
10 assigns.

11 The “Released Claims” are all claims, rights, demands, liabilities, and causes of action that were
12 alleged or reasonably could have been raised based on the facts alleged in the operative Complaint
13 and/or PAGA notice to the LWDA, regardless of the theory of recovery, during the Class Period,
14 including claims for: **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code
15 sections 1194, 1194.2, 1197, 1198, 204, 218.5, and the Applicable Wage Orders; **(2)** failure to pay
16 proper overtime wages in violation of Labor Code sections 204, 510, 1194, 1197, and 1198, and the
17 Applicable Wage Orders; **(3)** failure to provide compliant rest periods and pay missed rest break
18 premiums in violation of Labor Code section 226.7 and the Applicable Wage Orders; **(4)** failure to
19 provide compliant meal periods and pay missed meal period premiums in violation of Labor Code
20 sections 226.7 and 512, and the Applicable Wage Orders; **(5)** failure to maintain accurate employment
21 records in violation of Labor Code sections 1174 and 1174.5; **(6)** failure to pay timely wages during
22 employment in violation of Labor Code sections 200, 204, 210, 216, 218, and 218.5; **(7)** failure to pay
23 all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; **(8)** failure
24 to reimburse business expenses in violation of Labor Code sections 2802 and 2804; **(9)** failure to
25 provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3;
26 **(10)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation
27 of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); and **(11)** all claims for
28 liquidated damages, penalties, interest, fees, costs based on the foregoing.

1 Class Members who do not request exclusion from the Settlement will be deemed to have
2 acknowledged and agreed that their claims for wages and penalties in the Action are disputed, and that
3 the Settlement payments constitute payment of all sums allegedly due to them. Class Members will be
4 deemed to have acknowledged and agreed that California Labor Code section 206.5 is not applicable
5 to the Settlement payments. That section provides in pertinent part as follows:

6 “An employer shall not require the execution of a release of a claim or right on account
7 of wages due, or to become due, or made as an advance on wages to be earned, unless
8 payment of those wages has been made.”
9

10 Additionally, Plaintiffs, as agents and proxies for the LWDA, will release any and all PAGA
11 claims or causes of action of whatever kind or nature which occurred during the PAGA Period that
12 were alleged, or that reasonably could have been alleged, based on the facts alleged in the Action and
13 Plaintiffs’ LWDA letter, regardless of theory of recovery.

14 **6. YOUR OPTIONS**

15 **6.1. DO NOTHING AND RECEIVE YOUR PORTION OF THE SETTLEMENT**

16 If you do nothing, you will be automatically included as a Class Participant in the Settlement
17 and will receive a settlement payment. You do *not* have to take any further action to receive your
18 settlement payment. It is, however, the responsibility of all Class Members to ensure that the Settlement
19 Administrator has your current address on file, or you may not receive important information or a
20 settlement payment. The estimated amount of your settlement payment if you do nothing is included
21 on the attached *Class Action Settlement Share Form*.

22 **6.2. REQUEST EXCLUSION FROM THE CLASS AND THE SETTLEMENT**

23 If you do *not* wish to take part in the class action portion of the Settlement (the “Class
24 Settlement”), you may exclude yourself (i.e., opt out of the Class Settlement) by sending the Settlement
25 Administrator a letter or card postmarked no later than [Response Deadline] that specifically requests
26 exclusion from the Class Settlement in this case. The request for exclusion must include your name,
27 address, telephone number, and signature, and it should state:
28

1 “I wish to be excluded from the settlement class in the case of *Martin Javier Hernandez,*
2 *et al. v. Odyssey Landscaping Company, Inc., et al.*. I understand that if I ask to be
3 excluded from the settlement class, I will not receive any money from the settlement of
4 this lawsuit and will not be releasing any claims I might have.”

5 Send the request for exclusion directly to the Settlement Administrator at the following address
6 **by no later than [Response Deadline]:**

7
8 Phoenix Settlement Administrators
9 P.O. Box 7208
Orange, California 92863

10 Any person who submits a timely request for exclusion from the Class Settlement shall, upon
11 receipt, no longer be a Class Member, shall be barred from participating in the Class Settlement, and
12 shall receive no benefits from the class action portion of the Settlement. If you want confirmation of
13 receipt of your request for exclusion, please send it by United States certified mail, return receipt
14 requested, or contact the Settlement Administrator.

15 **Importantly,** Class Members who timely and validly request exclusion from the Class
16 Settlement will *not* be excluded from their share of the PAGA Payment. Requesting exclusion from
17 the Class Settlement applies solely to the Class Members’ entitlement to the class action portion of the
18 Settlement and not their entitlement to the PAGA Payment. If you request exclusion from the Class
19 Settlement you will still be entitled to your share, if any, of the PAGA Payment.

20 **6.3. OBJECT TO THE SETTLEMENT**

21 You have the right to object to the terms of the Settlement if you do not request exclusion. If,
22 however, the Court rejects your objection, you will still be bound by the terms of the Settlement. If you
23 wish to object to the Settlement, or any portion of it, you may file with the Settlement Administrator
24 and the Court a written objection stating your name, address, telephone number, dates of employment
25 with Defendant, the case name and number, each specific reason in support of your objection, and any
26 legal support for each objection. Objections in writing must be mailed to the Settlement
27 Administrator—Phoenix Settlement Administrators, P.O. Box 7208, Orange, California 92863—by no
28

1 later than **[Response Deadline]** to be considered. **Objections that do not include all required**
2 **information, or that are not timely submitted, might not be considered by the court.**

3 If you choose to object to the Settlement, you may also appear to speak at the final approval
4 and fairness hearing scheduled for **[Final Approval Hearing Date]**, at **[Final Approval Hearing Time]**
5 in Department **[Court Department]** of the Superior Court of the State of California for the County of
6 San Joaquin, located at **[Court Location]**. You have the right to appear either in person or through your
7 own attorney at this hearing. If you decide to hire an attorney to represent you, you will be solely
8 responsible for paying any attorneys' fees and/or costs associated with that representation.

9 If you object to the Settlement, you will remain a Class Member, and if the Court approves the
10 Settlement, you will receive payment and be bound by the terms of the Settlement in the same way as
11 Class Members who do not object. Any Class Member who does not object in the manner provided
12 above shall have waived any objection to the Settlement, whether by appeal or otherwise.

13 The Court may, at the time of the final approval and fairness hearing, have certain social
14 distancing requirements or procedures for attendance at hearings. If you wish to object to the Settlement
15 by speaking at the final approval and fairness hearing, you may contact Class Counsel, whose
16 information is provided below, for more information about the Court's current social distancing
17 procedures. You may also review the Court's website for the most current information.

18 **6.4. DISPUTE YOUR WORKWEEK OR PAY PERIOD ALLOCATION**

19 The workweeks you worked for Defendant during the Class Period will be calculated based on
20 Defendant's records. If you feel that you were not credited with the correct number of workweeks
21 worked during the Class Period or with the correct number of pay periods during the PAGA Period,
22 you may submit evidence to the Settlement Administrator on or before **[Response Deadline]** with
23 documentation to establish the number of workweeks (or pay periods) you claim to have actually
24 worked during the Class Period (or PAGA Period). **Documentation sent to the Settlement**
25 **Administrator will not be returned or preserved, so do *not* send originals.** The Parties and the
26 Settlement Administrator will promptly evaluate the evidence submitted and discuss in good faith how
27 many workweeks (or pay periods) should be credited. The Settlement Administrator will make the final
28

1 decision as to how many workweeks (or pay periods) are credited and report the outcome to the Class
2 Participant. If you are unsatisfied with the decision, you may submit an objection, as explained above.

3 **7. HOW TO UPDATE OR CHANGE YOUR ADDRESS**

4 If you move after receiving this notice or if it was misaddressed, please contact the Settlement
5 Administrator, Phoenix Settlement Administrators, at **(800) 784-2174** or by email at
6 **info@phoenixclassaction.com**, as soon as possible. **This is important to ensure that future notices**
7 **and/or the Settlement payment reach you.**

8 **8. NOTICE OF FINAL JUDGMENT IF THE SETTLEMENT IS APPROVED**

9 Within seven (7) days after the Court has held a final and fairness approval hearing and entered
10 a final order approving the Settlement, if it chooses to do so, the Settlement Administrator will post a
11 copy of that order and final judgment on its website at the following website address:

12 **[Case-Specific Settlement URL (to be added by Settlement Administrator)]**

13 **9. IF THE SETTLEMENT IS NOT APPROVED**

14 If the Settlement is not approved by the Court, or if any of its conditions are not satisfied, the
15 Settlement may be voided, in which case no money will be paid, and the case will return to litigation.
16 If that happens, there is no assurance: **(1)** that the class will be certified by the Court; **(2)** that any
17 decision at trial would be in favor of Class Members; **(3)** that a trial decision, if any, would be as
18 favorable to the Class Members as the Settlement; or **(4)** that any favorable trial decision would be
19 upheld if an appeal was filed.

20 **10. QUESTIONS OR COMMENTS**

21 **PLEASE DO NOT CALL OR CONTACT THE COURT.** If you have any questions about
22 the settlement, you may contact the Settlement Administrator at: **(800) 784-2174** or by e-mail at
23 **info@phoenixclassaction.com**. You may also contact Class Counsel at the addresses or phone
24 numbers listed below.

25 This Notice of Class Action and PAGA Settlement is only a summary of the case and the
26 settlement. For a more detailed statement of the matters involved in the case and the settlement, you
27 may refer to the pleadings, the settlement agreement, and other papers filed in the case. All inquiries
28

1 by Class Members or PAGA Members regarding this Notice and/or the settlement should be directed
2 to the Settlement Administrator or Class Counsel.

3
4
5 **Lawyers Representing Plaintiffs and the Class Members**

6 **MELMED LAW GROUP P.C.**

7 Jonathan Melmed

8 jm@melmedlaw.com

9 Kyle D. Smith

ks@melmedlaw.com

10 Joanne Kim

joanne@melmedlaw.com

1801 Century Park East, Suite 850

11 Los Angeles, California 90067

12 Phone: (310) 824-3828

Fax: (310) 862-6851

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EXHIBIT 2

Class Action Settlement Share Form

CLASS ACTION AND PAGA SETTLEMENT SHARE FORM

Martin Javier Hernandez, et al. v. Odyssey Landscaping Company, Inc., et al.

Case Number STK-CV-UOE-2021-11109

Superior Court of the State of California for the County of San Joaquin

The Proposed Class Action and PAGA Settlement Agreement (the “Settlement”) described in the accompanying *Notice of Proposed Class Action Settlement* resolves disputed claims against Defendant Odyssey Landscaping Company, Inc. (“Defendant”) arising out of their compensation practices during the period from December 7, 2017, through [the earlier of: April 18, 2023, or the date of preliminary approval of the settlement] (the “Class Period”) as applied to all individuals who are or were employed by Defendant as non-exempt employees in California during the Class Period (“Class Members”). The Settlement also resolves disputed claims against Defendant arising under the Private Attorneys’ General Act (“PAGA”) from December 3, 2020, through the earlier of April 18, 2023, or the date of preliminary approval of the settlement (“PAGA Period”) as applied to all current and former hourly-paid or non-exempt employees employed by Defendant in the State of California at any time (“PAGA Members”).

You are receiving this form because you are believed to be a Class Member [and a PAGA Member]. **According to Defendant’s records, you worked [redacted] workweeks for Defendant during the Class Period. [In addition, you worked [redacted] pay periods for Defendant during the PAGA Period.] Accordingly, your share of the Settlement is currently estimated to be \$ [redacted],** which is an estimate of your allocated portion the Net Settlement Amount, as that term is defined in the accompanying *Notice of Proposed Class Action Settlement*. Your estimated share of the Settlement may increase depending on factors such as, but not limited to, the number of Class Members who effectively exclude themselves from the Settlement.

You do not need to do anything to receive money under the Settlement.

If you believe the information provided above as to the number of your workweeks or pay periods is incorrect and wish to dispute it, please contact the Settlement Administrator no later than [Response Deadline] at:

Phoenix Settlement Administrators
info@phoenixclassaction.com
(800) 784-2174
P.O. Box 7208
Orange, California 92863

If you dispute the information stated above, the information Defendant provided to the Settlement Administrator will control unless you are able to provide documentation that establishes otherwise. Any disputes, along with supporting documentation, must be postmarked no later than [Response Deadline].

Do not send originals; documentation sent to the claims administrator will not be returned or preserved.