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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN BERNARDINO**

13 ALEJANDRO VALENCIA, JOSE LUISE
14 ORTEGA, as individuals, on behalf of
15 himself and all others similarly situated,

16 Plaintiffs,

17 vs.

18 THE ORIGINAL MOWBRAY'S TREE
19 SERVICE, INCORPORATED, a California
20 Corporation, and DOES 1-50, inclusive,

21 Defendants.

Case No.: CIVDS1825518

(Consolidated for all purposes with Case No. CIVDS1916818)

STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND RELEASE

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21 **THE ORIGINAL MOWBRAY'S TREE SERVICE, INCORPORATED**
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1 **STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**

2 **AND RELEASE**

3 This Stipulation of Class Action Settlement and Release (“Settlement” or “Settlement
4 Agreement”) is made and entered into by and between Plaintiffs Alejandro Valencia and Jose Luis
5 Ortega (“Plaintiffs” or “Class Representatives”), as individuals and on behalf of all others
6 similarly situated and aggrieved, and Defendant The Original Mowbray’s Tree Service,
7 Incorporated (“Defendant” or “Mowbray’s”) (collectively with Plaintiffs, the “Parties”).

8 **DEFINITIONS**

9 The following definitions are applicable to this Settlement Agreement. Definitions
10 contained elsewhere in this Settlement Agreement will also be effective:

11 1. “Action” means the civil lawsuits filed by Plaintiffs against Defendant, styled
12 Alejandro Valencia v. The Original Mowbray’s Tree Service, Incorporated, et al., San Bernardino
13 Superior Court Case No. CIVDS1825518, and Jose Luis Ortega v. The Original Mowbray’s Tree
14 Service, Incorporated, San Bernardino Superior Court Case No. CIVDS1916818, which matters
15 have been consolidated for all purposes.

16 2. “Appeal” means a timely appeal by a Class Member to the Order and Judgment
17 approving the Settlement, or an appeal by one of the Parties to an order that materially alters the
18 Settlement.

19 3. “Attorney’s Fees and Costs” means attorney’s fees agreed upon by the Parties and
20 approved by the Court for Class Counsel’s litigation and resolution of the Action, and all costs
21 incurred and to be incurred by Class Counsel in the Action, including but not limited to, costs
22 associated with documenting the Settlement, providing any notices required as part of the
23 Settlement or Court order, securing the Court’s approval of the Settlement, administering the
24 Settlement, obtaining entry of an Order and Judgment approving the Settlement, and expenses for
25 any experts. Class Counsel will request not more than one-third of the Gross Settlement Amount,
26 or Nine Hundred Fifty Thousand Dollars and Zero Cents (\$950,000.00) in attorney’s fees, and not
27 more than Twenty Thousand Dollars and Zero Cents (\$20,000.00) in litigation costs and expenses.
28 Defendant has agreed not to oppose Class Counsel’s request for attorney’s fees and costs and

1 expenses as set forth above.

2 4. "Class Counsel" means Zachary M. Crosner, Michael Crosner, and J. Kirk
3 Donnelly and Crosner Legal, P.C, Sahag Majarian and the Law Offices of Sahag Majarian, II, and
4 Nazo Koulloukian and Koul Law Firm.

5 5. "Class List" means a complete list of all Class Members that Defendant will
6 diligently and in good faith compile from its records and provide to the Settlement Administrator
7 within ten (10) business days after entry of an Order granting Preliminary Approval of this
8 Settlement. The Class List will be formatted in Microsoft Office Excel and will include each
9 Class Member's full name; most recent mailing address and telephone number; Social Security
10 Number; and dates of employment.

11 6. "Class Member(s)" or "Settlement Class" means all individuals employed by
12 Defendant in California as an hourly-paid, non-exempt employees performing tree trimming
13 related activities during the Class Period.

14 7. "Class Notice" means the Notice of Class Action Settlement substantially in the
15 form attached hereto as Exhibit A, and approved by the Court.

16 8. "Class Period" means the period from October 1, 2014 through the earlier of the
17 date of Preliminary Approval or November 30, 2020.

18 9. "Class Representative(s)" means Plaintiffs Alejandro Valencia and/or Jose Luis
19 Ortega.

20 10. "Gross Settlement Amount" means the amount of Two Million Eight Hundred Fifty
21 Thousand Dollars and Zero Cents (\$2,850,000.00), to be paid by Defendant in full satisfaction of
22 all claims alleged in the Action or that could have been alleged in the Actions, based on the
23 operative facts alleged therein, which includes all Individual Settlement Payments to Participating
24 Class Members, the Labor & Workforce Development Agency Payment, Attorney's Fees and
25 Costs, the Class Representative Enhancement Payments, and Settlement Administration Costs.
26 Any employer-side payroll taxes required by law, including the employer-side FICA, FUTA, and
27 SDI contributions, will be paid by Defendant separately and apart from the Gross Settlement
28 Amount. There will be no reversion of any portion of the Gross Settlement Amount to Defendant.

1 11. “Court” means Department S-26 of the San Bernardino County Superior Court.

2 12. “Effective Date” shall be when Final Approval of the Settlement can no longer be
3 appealed by an objector, or in the absence of any objections (or if all objections are withdrawn
4 with Court approval by the time of the Final Approval Hearing), five (5) calendar days following
5 Notice of Entry of Judgment. If objections are heard by the Court and overruled, and no appeal is
6 taken of the Judgment by an objector, then the Effective Date shall be sixty-five (65) calendar
7 days after Notice of Entry of Judgment. If any appeal is taken from the Court’s overruling of any
8 objections to the Settlement, then the Effective Date shall be ten (10) calendar days after all
9 appeals are withdrawn or after an appellate decision affirming the Final Approval and Judgment
10 becomes final.

11 13. “Final Approval” means the Court’s Order granting final approval of the
12 Settlement.

13 14. “Individual Settlement Payment” means each Participating Class Member’s
14 respective share of the Net Settlement Amount.

15 15. “Labor & Workforce Development Agency Payment” means the payment of Thirty
16 Seven Thousand Five Hundred Fifty Dollars (\$37,500) from the Gross Settlement Amount to the
17 California Labor & Workforce Development Agency for its portion of the civil penalties paid
18 under the Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.*

19 16. “Net Settlement Amount” means the portion of the Gross Settlement Amount
20 remaining after deducting the Class Representative Enhancement Payments, the Labor &
21 Workforce Development Agency Payment, Attorney’s Fees and Costs, and Settlement
22 Administration Costs. The entire Net Settlement Amount will be distributed to the Participating
23 Class Members. There will be no reversion of any portion of the Net Settlement Amount to
24 Defendant.

25 17. “Notice of Entry of Judgment” means a Notice of Entry of Judgment pursuant to
26 section 664.5(c) of the California Code of Civil Procedure filed and served by Plaintiffs.

27 18. “Objection” means a Class Member’s valid and timely written objection to the
28 Settlement Agreement. For an Objection to be valid, it must include: (i) the objector’s full name,

1 signature, address, and telephone number; (ii) a written statement of all grounds for the objection
2 accompanied by any legal support for such objection; and (iii) copies of papers, briefs, or other
3 documents upon which the objection is based, if any. Alternatively, any Class Member may
4 Object by appearing at the Final Approval Hearing either with or without submitting a written
5 Objection.

6 19. "Parties" means Plaintiffs and Defendant collectively.

7 20. "Participating Class Member" means any Class Member who does not submit a
8 timely and valid Request for Exclusion.

9 21. "Plaintiff(s)" means Alejandro Valencia and/or Jose Luis Ortega.

10 22. "Plaintiffs' Counsel" means Zachary M. Crosner, Michael Crosner, and J. Kirk
11 Donnelly and Crosner Legal, P.C, and/or Sahag Majarian II and the Law Offices of Sahag
12 Majarian, II, and Nazo Koulloukian and Koul Law Firm.

13 23. "Preliminary Approval" means the Court order granting preliminary approval of
14 the Settlement.

15 25. "Qualifying Workweek(s)" means each seven-day period(s) commencing on
16 Sunday at 12:00 a.m. and ending on a Saturday at 11:59 p.m. in which a Class Member was
17 employed by Defendant in California during the Class Period.

18 26. "Released Claims" means any and all causes of action, claims, rights, damages,
19 punitive or statutory damages, penalties, liabilities, expenses, and losses alleged in the operative
20 complaint or which could reasonably have been alleged in the operative complaint based on the
21 facts alleged therein, including, but not limited to: (a) any alleged failure by Defendant (1) to pay
22 wages, minimum wages, overtime, accrued vacation wages, or reporting time wages; (2) to
23 provide meal or rest periods or compensation in lieu thereof; (3) to provide accurate wage
24 statements to employees; (4) to timely pay wages during employment; (5) to pay all wages due
25 upon separation of employment; (6) to reimburse expenses; (7) to provide paid sick leave; (8) to
26 provide required days of rest; and (9) to maintain payroll records; (b) any right or claim for civil
27 penalties pursuant to the Private Attorneys General Act of 2004, California Labor Code §§ 2698,
28 *et seq.*, or any penalties arising under the Labor Code or Wage Orders based on the alleged

1 failures set forth in (a)(1) through (a)(9) above; (c) any right or claim for unfair business practices
2 in violation of California Business & Professions Code §§ 17200, *et seq.*, based on the alleged
3 failures set forth in (a)(1) through (a)(9) above; and (d) any violation of the California Labor Code
4 arising from or related to the conduct alleged in (a)(1) through (a)(9) above, including, without
5 limitation, violation of Labor Code Sections 98.6, 200, 201, 202, 203, 204, 210, 216, 218.5, 221,
6 222, 223, 224, 225.5, 226, 226.2, 226.3, 226.6, 226.7, 245-248.5, 256, 351, 353, 450, 510, 512,
7 550, 551, 552, 553, 554, 555, 556, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1,
8 1198, 1199, 2699, 2751, 2802, 2810.5, or any other state statute, rule and/or regulation (Wage
9 Order), or similar causes of action which any Class Member has or might have that was alleged or
10 could have been alleged based on the factual allegations in the operative complaint.

11 27. “Released Parties” means Defendant (along with any past, present, and future
12 parents, affiliates, subsidiaries, divisions, predecessors, successors, and assigns, and each of their
13 officers, directors, board members, trustees, shareholders, members, employees, agents, attorneys,
14 auditors, accountants, benefits administrators or third-party administrators, experts, contractors,
15 stockholders, representatives, partners, insurers, reinsurers, and other persons acting on their
16 behalf).

17 28. “Request for Exclusion” means a timely letter submitted by a Class Member
18 indicating a request to be excluded from the Settlement. The Request for Exclusion must: (i) set
19 forth the name, address, telephone number and last four digits of the Social Security Number of
20 the Class Member requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to
21 the Settlement Administrator; (iv) clearly state that the Class Member does not wish to be included
22 in the Settlement; and (v) be postmarked on or before the Response Deadline.

23 29. “Response Deadline” means the deadline by which Class Members must postmark
24 to the Settlement Administrator Requests for Exclusion, or postmark Objections to the Settlement
25 Administrator. The Response Deadline will be forty-five (45) calendar days from the initial
26 mailing of the Class Notice by the Settlement Administrator, unless the 45th day falls on a Sunday
27 or Federal holiday, in which case the Response Deadline will be extended to the next day on
28 which the U.S. Postal Service is open.

1 30. "Settlement Administration Costs" means the costs to the Settlement Administrator
2 for administering this Settlement, including, but not limited to, printing, distributing, and tracking
3 documents for this Settlement, creating and maintaining a web site and toll-free telephone number,
4 tax reporting, distributing the Gross Settlement Amount, and providing necessary reports and
5 declarations, as requested by the Parties or the Court. The Settlement Administration Costs will
6 not exceed Thirty Five Thousand Dollars and No Cents (\$35,000.00).

7 31. "Settlement Administrator" means CPT, Inc., or any other third-party class action
8 settlement administrator agreed to by the Parties and approved by the Court for the purposes of
9 administering this Settlement. The Parties each represent that they do not have any financial
10 interest in the Settlement Administrator or otherwise have a relationship with the Settlement
11 Administrator that could create a conflict of interest.

12 **TERMS OF AGREEMENT**

13 The Plaintiffs, on behalf of themselves and the Settlement Class, and Defendant agree as
14 follows:

15 32. Class Certification. For settlement purposes only, the Parties agree that the Class
16 shall be certified. This Settlement Agreement is contingent upon the approval and certification by
17 the Court of the Class for settlement purposes only. Defendant does not waive, and instead
18 expressly reserves, its rights to challenge the propriety of class certification for any purpose should
19 the Court not approve the Settlement. In connection with the proposed certification of the Class,
20 the Parties shall cooperate and present to the Court for its consideration competent evidence, as
21 may be requested by the Court, under the applicable due process requirements and standards for
22 class certification. In the event either preliminary or final approval of the Settlement is not
23 obtained or, if obtained, is reversed upon appeal, the Parties shall be returned to their respective
24 positions in the action as they existed immediately prior to the execution of this Agreement.
25 Furthermore, nothing said or represented in connection with obtaining approval of the Court with
26 respect to this settlement, either on a preliminary or final basis, shall be admissible for any
27 purpose other than to obtain approval by the Court of this Settlement.

28 33. Funding of the Gross Settlement Amount. Defendant will deposit the Gross

1 Settlement Amount via wire transfer into a Qualified Settlement Account (“QSA”) to be
2 established by the Settlement Administrator in three installments as follows:

3 First Installment: in the amount of Seven Hundred Twelve Thousand Five Hundred Dollars
4 and No Cents (\$712,500.00) within ten (10) business days of Preliminary Approval;

5 Second Installment: in the amount of Seven Hundred Twelve Thousand Five Hundred
6 Dollars and No Cents (\$712,500.00) within the later of ten (10) business days after Final Approval
7 or April 9, 2021; and

8 Third Installment: in the amount of One Million Four Hundred Twenty Five Thousand
9 Dollars and No Cents (\$1,425,000.00) on or before January 14, 2022.

10 In the event the Settlement does not receive full and final approval from the Court, the
11 First Installment and all interest accrued thereon shall be returned to Defendant within five (5)
12 business days after the Court issues an order denying final approval or Defendant terminates the
13 settlement under Paragraph 51.

14 34. Attorney’s Fees and Costs. Defendant agrees not to oppose or impede any
15 application or motion by Class Counsel for Attorney’s Fees and Costs, not to exceed one-third
16 (1/3) of the Gross Settlement Amount, or Nine Hundred Fifty Thousand Dollars and Zero Cents
17 (\$950,000.00) in attorney’s fees, and actual litigation costs and expenses not to exceed Twenty
18 Thousand Dollars and Zero Cents (\$20,000.00). The Parties stipulate that, for purposes of
19 settlement only, Plaintiffs and the Class are the prevailing parties in the Action and are entitled to
20 attorney’s fees and costs under the applicable fee-shifting statutes, including, inter alia, California
21 Code of Civil Procedure section 1021.5, and Labor Code sections 218.5, 1194(a) and 2699(g).
22 Any funds allocated to Attorney’s Fees and Costs but not awarded by the Court will be included in
23 the Net Settlement Amount and distributed pro rata to the Participating Class Members. The
24 Settlement Administrator will issue an IRS Form 1099 to Class Counsel for the Attorney’s Fees
25 and Costs.

26 35. Class Representative Enhancement Payments. In exchange for a general release,
27 and in recognition of their effort and work in prosecuting the Action on behalf of the Class
28 Members, Defendant agrees not to oppose or impede any application or motion for a Class

1 Representative Enhancement Payment not to exceed Seven Thousand Five Hundred Dollars and
2 Zero Cents (\$7,500.00) to each of the Plaintiffs. The Class Representative Enhancement
3 Payments will be paid from the Net Settlement Amount and will be in addition to Plaintiffs'
4 Individual Settlement Payments. Any funds allocated to the Class Representative Enhancement
5 Payments but not awarded by the Court will be included in the Net Settlement Amount and
6 distributed pro rata to the Participating Class Members. Plaintiffs will be solely responsible to pay
7 any and all applicable taxes on the payment made pursuant to this paragraph, and the Settlement
8 Administrator will issue an IRS Form 1099 to Plaintiffs for the Class Representative Enhancement
9 Payments.

10 36. Settlement Administration Costs. The Settlement Administrator will be paid for
11 the reasonable costs of administration of the Settlement and distribution of payments from the
12 Gross Settlement Amount, which Settlement Administration Costs shall not exceed Thirty Five
13 Thousand Dollars and Zero Cents (\$35,000.00). These costs, will include, *inter alia*, the required
14 tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms,
15 distributing Class Notices, creating and maintaining a web site and toll-free telephone number,
16 calculating Individual Settlement Payments and distributing the Gross Settlement Amount as set
17 forth herein, and providing necessary reports and declarations. These costs shall be paid from the
18 Gross Settlement Amount. Any funds allocated to Settlement Administration Costs but not
19 incurred by or otherwise paid to the Settlement Administrator will be included in the Net
20 Settlement Amount and distributed pro rata to the Participating Class Members.

21 37. PAGA Allocation. The Parties agree to allocate Fifty Thousand Dollars (\$50,000)
22 from the Gross Settlement Amount to the resolution of all claims related to the Class Members
23 arising under the California Private Attorneys General Act of 2004 (California Labor Code
24 sections 2698, *et seq.*, "PAGA"). Pursuant to PAGA, Seventy-Five Percent (75%) of the PAGA
25 allocation, or Thirty Seven Thousand Five Hundred Dollars (\$37,500), will be paid to the
26 California Labor & Workforce Development Agency as the Labor & Workforce Development
27 Agency Payment, and the remaining Twenty Five Percent (25%) of the PAGA allocation, or
28 Twelve Thousand Five Hundred (\$12,500), will be allocated to the Net Settlement Amount for

1 distribution to the Participating Class Members.

2 38. Individual Settlement Payment Calculations. The Individual Settlement Payment
3 for each Participating Class Member shall be determined as follows: (a) the Net Settlement
4 Amount shall be divided by the total number of Qualifying Workweeks of all of the Class
5 Members. The result of this division is referred to as the “Weekly Rate;” and (b) the amount of
6 each Class Member’s Individual Settlement Payment shall be the result of multiplying each Class
7 Member’s number of Qualifying Workweeks by the Weekly Rate. The Settlement Administrator
8 will perform all calculations necessary to determine the Individual Settlement Payments based
9 upon information provided by Defendant with the Class List.

10 39. The Settlement Administrator shall be responsible for reducing each Individual
11 Settlement Payment based on any required deductions for each Participating Class Member as
12 specifically set forth herein, including employee-side tax withholdings or deductions.

13 40. The entire Net Settlement Amount will be disbursed to all Class Members who do
14 not submit timely and valid Requests for Exclusion. If there are any timely and valid Requests for
15 Exclusion from members of the Class, the Settlement Administrator shall not include all
16 Qualifying Workweeks attributable to such individuals as part of the calculation of the total class-
17 wide Qualifying Workweeks for all Participating Class Members under paragraph 38 above, so
18 that the amount available for distribution to the Participating Class Members equals 100% of the
19 Net Settlement Amount.

20 41. No Credit To Benefit Plans. The Individual Settlement Payments made to
21 Participating Class Members under this Settlement, as well as any other payments made pursuant
22 to this Settlement, will not be utilized to calculate any additional benefits under any benefit plans
23 to which any Class Members may be eligible, including, but not limited to: profit-sharing plans,
24 bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and
25 any other benefit plan. Rather, it is the Parties’ intention that this Settlement Agreement will not
26 affect any rights, contributions, or amounts to which any Class Members may be entitled under
27 any benefit plans.

28 42. Administration Process. The Parties agree to cooperate in the administration of the

1 settlement and to make all reasonable efforts to control and minimize the costs and expenses
2 incurred in administration of the Settlement.

3 43. Delivery of the Class List. Within ten (10) business days of Preliminary Approval,
4 Defendant will provide the Class List to the Settlement Administrator.

5 44. Notice by First-Class U.S. Mail. Within ten (10) business days after receiving the
6 Class List from Defendant, the Settlement Administrator will mail a Class Notice to all Class
7 Members via regular First-Class U.S. Mail, using the most current, known mailing addresses
8 identified in the Class List.

9 45. Confirmation of Contact Information in the Class List. Prior to mailing, the
10 Settlement Administrator will perform a search based on the National Change of Address
11 Database for information to update and correct for any known or identifiable address changes.
12 Any Class Notices returned to the Settlement Administrator as non-deliverable on or before the
13 Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding
14 address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing
15 on the Class Notice. If no forwarding address is provided, the Settlement Administrator will
16 promptly attempt to determine the correct address using a skip-trace or other search using the
17 name, address and/or Social Security Number of the Class Member involved, and will then
18 perform a single re-mailing.

19 46. Class Notices. All Class Members will be mailed a Class Notice via First Class
20 U.S. Mail. Each Class Notice will provide: (i) information regarding the nature of the Actions; (ii)
21 a summary of the Settlement's principal terms; (iii) the Settlement Class definition; (iv) the total
22 number of Qualifying Work Weeks worked by each respective Class Member while working for
23 Mowbray's as an hourly-paid, non-exempt employee performing tree trimming related activities
24 during the Class Period; (v) each Class Member's estimated Individual Settlement Payment and
25 the formula for calculating Individual Settlement Payments; (vi) the procedure for a Class Member
26 to dispute the calculation of their estimated Individual Settlement Payments; (vii) the dates that
27 comprise the Class Period; (viii) instructions on how to submit a Request for Exclusion or
28 Objection; (ix) the deadlines by which the Class Member must postmark Requests for Exclusion,

1 and the deadlines by which the Class Members must postmark Objections to the Settlement; and
2 (x) the claims to be released. The Class Notice shall be in substantially the same form as Exhibit
3 A hereto, as approved by the Court.

4 47. The Settlement Administrator will also set up and maintain a toll-free telephone
5 number for Class Members to contact the Settlement Administrator regarding the Settlement, and
6 the toll-free telephone number will be identified in the Class Notice.

7 48. Disputed Information on Class Notices. Class Members will have an opportunity
8 to dispute the information provided in their Class Notices. To the extent Class Members dispute
9 their total Qualifying Work Weeks while working for Defendant as an hourly-paid, non-exempt
10 employee performing tree trimming related activities during the Class Period, Class Members may
11 produce evidence to the Settlement Administrator showing that such information in the Class
12 Notice is inaccurate. The Settlement Administrator will decide the dispute. Mowbray's records
13 will be presumed correct, but the Settlement Administrator will evaluate the evidence submitted
14 by the Class Member and will make the final decision as to the merits of the dispute, which
15 decision shall be final and unappealable by any Party or Class Member. All disputes will be
16 resolved within ten (10) business days of the Response Deadline.

17 49. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
18 Settlement Agreement must sign and postmark a written Request for Exclusion to the Settlement
19 Administrator within the Response Deadline. The postmark date will be the exclusive means to
20 determine whether a Request for Exclusion has been timely submitted.

21 50. Defective Submissions. If a Class Member's Request for Exclusion is defective as
22 to the requirements listed herein, that Class Member will be given an opportunity to cure the
23 defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3)
24 business days of receiving the defective submission to advise the Class Member that his or her
25 submission is defective and that the defect must be cured to render the Request for Exclusion
26 valid. The Class Member will have until the later of (i) the Response Deadline or (ii) fifteen (15)
27 calendar days from the date of the cure letter to postmark a revised Request for Exclusion. If the
28 revised Request for Exclusion is not postmarked within that period, it will be deemed untimely.

1 51. Option to Rescind the Settlement Agreement: Defendant may elect, at its option, to
2 rescind the Settlement if more than five percent (5%) of Class Members submit timely and valid
3 Requests for Exclusion. If Defendant exercises the conditional right to rescind, they must do so
4 by written communication to Class Counsel that is received by Class Counsel within thirty (30)
5 calendar days of the Response Deadline. In the event Defendant exercises the conditional right to
6 rescind, Defendant will be responsible for all Settlement Administration Costs incurred to the date
7 of rescission.

8 52. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
9 Member who does not affirmatively opt-out of the Settlement Agreement by submitting a timely
10 and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the
11 Released Claims, as well as any Judgment that may be entered by the Court if it grants final
12 approval to the Settlement.

13 53. Objection Procedures. To object to the Settlement Agreement, a Class Member
14 must timely submit to the Settlement Administrator a written Objection. Any written Objection
15 must be signed by the Class Member and contain all information required by this Settlement
16 Agreement, as specified in the Class Notice. Written Objections may be mailed to the Settlement
17 Administrator as explained in the Class Notice. The Settlement Administrator will forward copies
18 of all written Objections to both Class Counsel and counsel for the Defendant within three (3)
19 calendar days of receipt. The postmark date will be deemed the exclusive means for determining
20 whether a written Objection is timely. Class Members who fail to object in the manner specified
21 above will be deemed to have waived all objections to the Settlement and will be foreclosed from
22 making any objections, whether by appeal or otherwise, to the Settlement Agreement.

23 Alternatively, any Class Member may appear at the Final Approval Hearing, personally or through
24 their own counsel, in order to have their objections heard by the Court, regardless of whether such
25 Class Member submits a written Objection. Only those Class Members who do not submit a
26 Request for Exclusion may object to the Settlement. At no time will any of the Parties or their
27 counsel seek to solicit or otherwise encourage Class Members to submit written or oral objections
28

1 to the Settlement Agreement or appeal from the Order and Judgment. Class Counsel will not
2 represent any Class Members with respect to any such objections to this Settlement.

3 54. Certification Reports. The Settlement Administrator will provide all counsel with a
4 weekly report that certifies the number of Class Members who have submitted valid Requests for
5 Exclusion, and whether any Class Member has submitted a challenge to any information
6 contained in their Class Notice. Additionally, the Settlement Administrator will provide to
7 counsel for both Parties any updated reports regarding the administration of the Settlement
8 Agreement as needed or requested.

9 55. Distribution of Settlement Payments. There will be two distributions of the
10 Settlement Payments. The First Distribution will be made within ten (10) business days of the
11 Second Installment, and the Second Distribution will be made within ten (10) business days of the
12 Third Installment. The Settlement Administrator will issue the Court-approved payments pro rata
13 to: (i) Participating Class Members; (ii) the Labor & Workforce Development Agency; (iii)
14 Plaintiffs; and (iv) Class Counsel. The Settlement Administrator will pay itself the full amount of
15 Settlement Administration Costs from the First Distribution.

16 56. Un-cashed Settlement Checks. If a Participating Class Member's Individual
17 Settlement Payment check is not cashed within 90 days after its last mailing to the Participating
18 Class Member, the Settlement Administrator will send the Participating Class Member a letter
19 informing him or her that unless the check is cashed in the next 30 days, it will expire and become
20 non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. With
21 respect to the First Distribution, if any checks remain uncashed by the expiration of the 30-day
22 period after this notice, the funds represented by those checks and funds represented by Individual
23 Settlement Payment checks returned as undeliverable will be placed back into the Net Settlement
24 Amount and distributed pro rata to the Participating Class Members as part of the Second
25 Distribution. With respect to the Second Distribution, subject to Court approval, if any checks
26 remain uncashed by the expiration of the 30-day period after this notice, the funds represented by
27 those checks and funds represented by Individual Settlement Payment checks returned as
28 undeliverable will be forwarded to the California State Controller's Unclaimed Property Fund.

1 57. Certification of Completion. Upon completion of administration of the Settlement,
2 the Settlement Administrator will provide a written declaration under oath to certify such
3 completion to the Court and counsel for all Parties.

4 58. Treatment of Individual Settlement Payments. All Individual Settlement Payments
5 will be allocated as follows: (i) Twenty Percent (20%) of each Individual Settlement Payment will
6 be allocated as wages for which IRS Forms W-2 will be issued; and (ii) Eighty Percent (80%) will
7 be allocated to penalties and interest for which IRS Forms 1099-MISC will be issued.

8 59. Administration of Taxes by the Settlement Administrator. The Settlement
9 Administrator will be responsible for issuing to Plaintiffs, Participating Class Members, and Class
10 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid
11 pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding
12 all payroll taxes and penalties to the appropriate government authorities.

13 60. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
14 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
15 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
16 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
17 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
18 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
19 INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
20 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
21 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31
22 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
23 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
24 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
25 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
26 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
27 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
28 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY

1 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
2 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
3 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
4 OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF
5 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
6 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
7 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
8 AGREEMENT.

9 61. No Prior Assignments. The Parties and their counsel represent, covenant, and
10 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to
11 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
12 action, cause of action or right herein released and discharged.

13 62. Nullification of Settlement Agreement. In the event that: (i) the Court does not
14 finally approve the Settlement as provided herein; or (ii) the Settlement does not become final for
15 any other reason, then this Settlement Agreement, and any documents generated to bring it into
16 effect, will be null and void. Any order or judgment entered by the Court in furtherance of this
17 Settlement Agreement will likewise be treated as void from the beginning.

18 63. Preliminary Approval Hearing. Plaintiffs will obtain a hearing before the Court to
19 request the Preliminary Approval of the Settlement, and the entry of a Preliminary Approval Order
20 for (a) conditional certification of the Settlement Class for settlement purposes only, (b)
21 Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for the Final
22 Approval. The Preliminary Approval Order will provide for the Class Notice to be sent to all
23 Class Members as specified herein. In conjunction with the Preliminary Approval hearing,
24 Plaintiffs will submit this Settlement Agreement, which sets forth the terms of this Settlement, and
25 will include the proposed Class Notice, which is attached hereto as Exhibit A. Plaintiffs shall also
26 timely provide notice of the settlement and Preliminary Approval Hearing to the Labor &
27 Workforce Development Agency as required by PAGA.

28 64. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the

1 deadline to postmark Requests for Exclusion and Objections, and with the Court's permission, a
2 Final Approval Hearing will be conducted to determine the Final Approval of the Settlement,
3 along with the amounts properly payable for: (i) Individual Settlement Payments; (ii) the Labor &
4 Workforce Development Agency Payment; (iii) the Class Representative Enhancement Payments;
5 (iv) Attorney's Fees and Costs; and (v) all Settlement Administration Costs. The Final Approval
6 Hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Class
7 Counsel will be responsible for drafting all documents necessary to obtain final approval. Class
8 Counsel will also be responsible for drafting the application for the Representative Enhancement
9 Payments and Attorney's Fees and Costs, and a request for approval of the Settlement
10 Administration Costs, to be heard at the Final Approval Hearing.

11 65. Release by Plaintiffs, the Settlement Class and LWDA. Upon the Effective Date
12 and conditioned upon full satisfaction of the payment obligations in Paragraph 55, Plaintiffs and
13 all Participating Class Members will be deemed to have released the Released Claims, and the
14 LWDA will be deemed to have released the Released Claims brought under PAGA, and will be
15 barred and enjoined from bringing or prosecuting any of the Released Claims against the Released
16 Parties.

17 66. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by
18 the Court or after the Final Approval Hearing, the Parties will present the Judgment to the Court
19 for its approval. After entry of the Judgment, the Court will have continuing jurisdiction solely for
20 purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii)
21 settlement administration matters, and (iii) such post-Judgment matters as may be appropriate
22 under court rules or as set forth in this Settlement Agreement.

23 67. Release by Plaintiffs. Upon the Effective Date, in addition to the claims being
24 released by all Participating Class Members, Plaintiffs will release and forever discharge the
25 Released Parties, to the fullest extent permitted by law, of and from any and all claims, known and
26 unknown, asserted and not asserted, which Plaintiffs have or may have against the Released
27 Parties as of the date of execution of this Settlement Agreement. To the extent the foregoing
28 releases are releases to which Section 1542 of the California Civil Code or similar provisions of

1 other applicable law may apply, Plaintiffs expressly waive any and all rights and benefits
2 conferred upon them by the provisions of Section 1542 of the California Civil Code or similar
3 provisions of applicable law, which are as follows:

4 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
5 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
6 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
7 **RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY**
8 **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED**
9 **PARTY.**

10 68. Exhibit Incorporated by Reference. The terms of this Settlement Agreement
11 include the terms set forth in the attached Exhibit, which is incorporated by this reference as
12 though fully set forth herein. Any Exhibit to this Settlement Agreement is an integral part of the
13 Settlement.

14 69. No Future Employment. Plaintiffs agree they will not seek or accept reemployment
15 with Mowbray's or any Released Party. Plaintiffs understand that if they apply for re-employment
16 with Mowbray's or any Released Party, it or they shall have the absolute right to deny Plaintiffs
17 employment, and Plaintiffs shall have no recourse for such denial. Plaintiffs agree that this term
18 does not constitute a restraint on their ability to find and maintain employment in their profession.

19 70. Entire Agreement. This Settlement Agreement and attached Exhibit constitute the
20 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral
21 agreements may be deemed binding on the Parties. The Parties expressly recognize California
22 Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide
23 that a written agreement is to be construed according to its terms and may not be varied or
24 contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written
25 representations or terms will modify, vary or contradict the terms of this Settlement Agreement.

26 71. Amendment or Modification. Except as to non-material changes required by the
27 Court, no amendment, change, or modification to this Settlement Agreement will be valid unless
28 in writing and signed by the Parties. Concerning non-material changes required by the Court, the

1 Parties agree that their counsel may submit stipulated amendments to this Settlement Agreement
2 without obtaining further signatures from the Parties.

3 72. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
4 and represent they are expressly authorized by the Parties whom they represent to negotiate this
5 Settlement Agreement and to take all appropriate action required or permitted to be taken by such
6 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other
7 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
8 counsel will cooperate with each other and use their best efforts to effect the implementation of the
9 Settlement. If the Parties are unable to reach agreement on the form or content of any document
10 needed to implement the Settlement, or on any supplemental provisions that may become
11 necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the
12 Court to resolve such disagreement.

13 73. Binding on Successors and Assigns. This Settlement Agreement will be binding
14 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
15 defined.

16 74. California Law Governs. All terms of this Settlement Agreement and Exhibit
17 hereto will be governed by and interpreted according to the laws of the State of California.

18 75. Execution and Counterparts. This Settlement Agreement is subject only to the
19 execution of all Parties. However, the Settlement Agreement may be executed in one or more
20 counterparts. All executed counterparts and each of them, including facsimile and scanned copies
21 of the signature page, will be deemed to be one and the same instrument provided that counsel for
22 the Parties will exchange among themselves original signed counterparts.

23 76. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
24 this Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have
25 arrived at this Settlement after adversarial and arm's-length negotiations before a well-respected
26 and neutral mediator, in the context of adversarial litigation, and taking into account all relevant
27 factors, present and potential. The Parties further acknowledge that they are each represented by
28 competent counsel and that they have had an opportunity to consult with their counsel regarding

1 the fairness and reasonableness of this Settlement.

2 77. Invalidity of Any Provision. Before declaring any provision of this Settlement
3 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
4 extent possible consistent with applicable precedents so as to define all provisions of this
5 Settlement Agreement valid and enforceable.

6 78. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however,
7 that either party may appeal any court order that materially alters the Settlement Agreement's
8 terms.

9 79. Notices. Unless otherwise specifically provided herein, all notices, demands or
10 other communications given hereunder shall be in writing and shall be deemed to have been duly
11 given as of the third business day after mailing by United States registered or certified mail, return
12 receipt requested, addressed as follows:

13

14 To Plaintiffs and the Settlement Class:

15 Zachary Crosner
16 CROSNER LEGAL, P.C.
17 433 N. Camden Drive, Suite 400
18 Beverly Hills, CA 90210

18 Sahag Majarian
19 LAW OFFICES OF SAHAG MAJARIAN, II
20 18250 Ventura Blvd.
21 Tarzana, CA 91356

21 Nazo Koulloukian
22 KOUL LAW FIRM
23 3425 Wilshire Blvd., Ste. 1710
24 Los Angeles, CA 90010

24 To Mowbray's:

25 Michael I. Kim
26 CKB VIENNA LLP
27 9631 Pittsburgh Avenue
28 Rancho Cucamonga, CA 91730

80. Non-Admission of Liability. The Parties enter into this Settlement to resolve the
dispute that has arisen between them and to avoid the burden, expense and risk of continued

1 litigation. In entering into this Settlement, Defendant does not admit, and specifically denies, that
2 it violated any federal, state, or local law; violated any regulations or guidelines promulgated
3 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached
4 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or
5 engaged in any other unlawful conduct with respect to their employees. Neither this Settlement
6 Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, will
7 be construed as an admission or concession by Defendant of any such violations or failures to
8 comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this
9 Settlement, this Settlement Agreement and its terms and provisions will not be offered or received
10 as evidence in any action or proceeding to establish any liability or admission on the part of
11 Defendant or to establish the existence of any condition constituting a violation of, or a non-
12 compliance with, federal, state, local or other applicable law.

13 81. Waiver. No waiver of any condition or covenant contained in this Settlement
14 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
15 to imply or constitute a further waiver by such party of the same or any other condition, covenant,
16 right or remedy.

17 82. Enforcement Actions. In the event that one or more of the Parties institutes any
18 legal action or other proceeding against any other Party or Parties to enforce the provisions of this
19 Settlement or to declare rights and/or obligations under this Settlement, the successful Party or
20 Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorney's
21 fees and costs, including expert witness fees incurred in connection with any enforcement actions.

22 83. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
23 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
24 construed more strictly against one party than another merely by virtue of the fact that it may have
25 been prepared by counsel for one of the Parties, it being recognized that, because of the arms-
26 length negotiations between the Parties, all Parties have contributed to the preparation of this
27 Settlement Agreement.

28 84. Representation By Counsel. The Parties acknowledge that they have been

1 represented by counsel throughout all negotiations that preceded the execution of this Settlement
2 Agreement, and that this Settlement Agreement has been executed with the consent and advice of
3 counsel. Further, Plaintiffs and Plaintiffs' Counsel warrant and represent that there are no liens on
4 the Settlement Agreement.

5 85. All Terms Subject to Final Court Approval. All amounts and procedures described
6 in this Settlement Agreement herein will be subject to final Court approval.

7 86. Cooperation and Execution of Necessary Documents. All Parties will cooperate in
8 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
9 this Settlement Agreement.

10 87. Binding Agreement. The Parties warrant that they understand and have full
11 authority to enter into this Settlement Agreement, and further intend that this Settlement
12 Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible
13 and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation
14 confidentiality provisions that otherwise might apply under federal or state law.

15 88. Interim Stay of Proceedings. The Parties agree to stay and hold all proceedings in
16 the Action, except such proceedings necessary to implement and complete the Settlement, in
17 abeyance pending the Final Approval to be conducted by the Court.

18 89. Confidentiality. Plaintiffs, Plaintiffs' Counsel, Class Counsel, Defendants and their
19 counsel agree that they will not issue any press releases, initiate any contact with the press,
20 respond to any press inquiry or have any communication with the press about the fact, amount or
21 terms of the Settlement Agreement prior to Preliminary Approval. Nothing in this Settlement
22 Agreement shall limit Defendants' ability to fulfill disclosure obligations reasonably required by
23 law or in furtherance of business purposes, including the fulfillment of obligations stated in this
24 Settlement Agreement.

25
26 **SIGNATURES FOLLOW ON NEXT PAGE**

SIGNATURES

PLAINTIFFS

DEFENDANT


DATED:

DATED: 11.19.2020

By


Alejandro Valencia

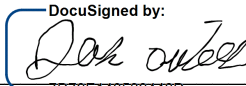
By


Name Richard Mowbray
Title CEO
The Original Mowbray's Tree Service,
Incorporated

11/30/2020

DATED:

By



7D79E140539448D...
Jose Luis Ortega

APPROVED AS TO FORM:


DATED: 11/18/2020

DATED:

By


Zachary Crosner
CROSNER LEGAL, P.C
Attorneys for Alejandro Valencia

By


Michael I. Kim
CKB VIENNA LLP
Attorneys for The Original
Mowbray's Tree Service, Incorporated


DATED: 11/30/2020

By


Sahag Majarian
LAW OFFICES OF SAHAG MAJARIAN, II

DATED: 11/30/2020

By


Nazo Koulloukian
KOUL LAW FIRM
Attorneys for Jose Luis Ortega

EXHIBIT

A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

**IF YOU WORKED AS AN HOURLY-PAID/NON-EXEMPT
EMPLOYEE PERFORMING TREE TRIMMING RELATED
ACTIVITIES FOR THE ORIGINAL MOWBRAY’S TREE SERVICE,
INCORPORATED BETWEEN OCTOBER 1, 2014 AND NOVEMBER
30, 2020, YOU MAY OBTAIN PAYMENTS FROM A SETTLEMENT
REACHED IN A PROPOSED CLASS ACTION LAWSUIT**

**PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE
AFFECTED.**

This Notice is court approved. This is not a solicitation from an attorney.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT	
DO NOTHING	<p>Receive compensation but lose rights to sue separately.</p> <p>If you do nothing, you will receive compensation for your claims alleged in this lawsuit. You will also give up your rights to ever sue Mowbray’s about any of the claims in this case.</p>
EXCLUDE YOURSELF FROM THE SETTLEMENT	<p>Get no compensation but keep rights to sue separately.</p> <p>If you ask to exclude yourself from the settlement, you will not receive any compensation from the settlement, but you will keep your rights to file a separate claim. Please be advised, however, that the time limits for filing a separate claim may have expired.</p>
OBJECT OR COMMENT	<p>Tell the Court why you like or don’t like the settlement.</p> <p>You may write to the Court, or you may appear personally or through your own attorney and your own expense, and tell the Court why you do or do not like the settlement. You must remain a part of the lawsuit to comment or object to the settlement, and you cannot object if you also ask to be excluded.</p>
<p>These rights and options – and the time deadlines for exercising them – are explained further in this Notice.</p>	

Any Questions? Call **toll free number**

1. WHY DID I GET THIS NOTICE?

You have received this Notice because we believe that you are a class member who may be entitled to money from this settlement.

This Notice describes a proposed settlement of the lawsuits *Alejandro Valencia v. The Original Mowbray's Tree Service, Incorporated, et al.*, filed on or about October 1, 2018 in the California Superior Court for the County of San Bernardino, Case Number CIVDS1825518 (the "Valencia Action"), and *Jose Luis Ortega v. The Original Mowbray's Tree Service, Incorporated*, filed on or about May 31, 2019 in the California Superior Court for the County of San Bernardino, Case No. CIVDS1916818 (the "Ortega Action," and both lawsuits are the "Actions"). This Notice is being sent to you by the order of the San Bernardino County Superior Court, which preliminarily approved the settlement and conditionally certified the Settlement Class on [REDACTED].

This Notice informs you of the terms of the proposed settlement, describes your rights and options in connection with the settlement, and explains what steps you may take to participate in, object to, or exclude yourself from, the settlement. **If you do not exclude yourself from the settlement and the settlement is finally approved by the Court, you will receive a settlement payment and be bound by the terms of the settlement and any final judgment.**

2. WHAT ARE THESE LAWSUITS ABOUT?

The Valencia Action was filed by Plaintiff Alejandro Valencia as a proposed class action on behalf of individuals who worked as hourly non-exempt employees for The Original Mowbray's Tree Service, Incorporated ("Mowbray's"). The Ortega Action was filed by Plaintiff Jose Luis Ortega also as a proposed class action on behalf of individuals who worked as hourly non-exempt employees for Mowbray's.

The Valencia Action and the Ortega Action were then consolidated by the Court on August 19, 2019, and Plaintiffs filed a consolidated class and representative action complaint on October 19, 2019. The consolidated Actions allege Mowbray's failed to pay Class Members all wages due, including minimum, overtime, reporting time and vacation wages, failed to provide all meal and rest breaks required under California law, failed to provide proper itemized wage statements, failed to reimburse certain business expenses, failed to provide sick pay, failed to provide required days of rest, failed to timely pay all wages due on separation of employment, and engaged in unfair competition. The Actions also allege a claim for civil penalties under the California Private Attorneys General Act, Cal. Labor Code sections 2698, *et seq.* (abbreviated "PAGA").

At all times Mowbray's has denied each and all of the claims and contentions alleged in the Actions, denied it engaged in any illegal or actionable conduct of any kind, and denied it owes any damages, restitution, or penalties of any kind or nature whatsoever. No court has made any rulings regarding the merits of the Actions.

Any Questions? Call toll free number [REDACTED]

After engaging in extensive investigation, a full day of mediation before an experienced mediator, and lengthy post-mediation negotiations, in which both sides recognized the substantial risks of an adverse result in the Actions for either side, Plaintiffs Valencia and Ortega and Mowbray's agreed on a class settlement that was preliminarily approved by the Court on [REDACTED].

The proposed settlement of the Actions covers all individuals employed by Mowbray's in California as an hourly-paid/non-exempt employee performing tree trimming related activities between October 1, 2014 and November 30, 2020.

The settlement represents a compromise of highly disputed claims. Nothing in the settlement is intended to or will be construed as an admission by Mowbray's that any claims in the Actions have merit or that it has any liability to Plaintiff Valencia, Plaintiff Ortega, or the Class on those claims.

The parties and their counsel have concluded the settlement is advantageous, considering the risks and uncertainties to each side of continued litigation and trial. Plaintiffs Valencia and Ortega and Class Counsel support the settlement.

3. WHAT IS A CLASS ACTION?

In a class action lawsuit, one or more persons, called Class Representatives, sue on behalf of other people who have similar claims. Alejandro Valencia and Jose Luis Ortega are the Class Representatives in the Lawsuit, and they assert claims on behalf of themselves and the Class Members. All of the Class Members form a Class. A class action allows one court to resolve the claims of all the Class Members at the same time.

4. WHY IS THERE A SETTLEMENT?

No Court or Judge has decided in favor of Plaintiffs Valencia and Ortega or in favor of Mowbray's. Instead, both sides agreed to a settlement. That way, both sides avoid the risks and costs of a trial, and people affected will quickly receive compensation. The Class Representatives and the attorneys think the settlement is best for the Class.

5. WHO IS INCLUDED IN THE SETTLEMENT CLASS?

All individuals who worked for Mowbray's in California as an hourly-paid/non-exempt employee performing tree trimming related activities from October 1, 2014 to November 30, 2020, are included in the Class.

According to Mowbray's records, you are a member of the Class and eligible for payments under the settlement. If you are still not sure if you are entitled to participate in the settlement, please call toll free number.

6. WHAT ARE THE TERMS OF THE CLASS SETTLEMENT?

In exchange for the release of claims against it and final disposition of the Actions, Mowbray's will pay Two Million Eight Hundred Fifty Thousand Dollars and Zero Cents (\$2,850,000.00) (the "Gross Settlement Amount") in three payments between now and January 2022.

Any Questions? Call toll free number

After attorney's fees and costs, service payments to the Class Representatives, a payment to the California Labor & Workforce Development Agency, and settlement administration costs are deducted from the Gross Settlement Amount, the remaining amount (the "Net Settlement Amount") will be distributed to those Class Members who do not exclude themselves from the settlement in two separate, equal payments. The first payment will be made shortly after the Court gives its final approval to the settlement, and the second payment will be made shortly after Mowbray's fully pays the Gross Settlement Amount in January 2022.

Subject to Court approval, the Gross Settlement Amount will be allocated as follows:

- **Settlement Awards:** Each Class Member who does not exclude himself will receive a payment based the total number of weeks they were employed by Mowbray's in California as an hourly-paid/non-exempt employee during the relevant time period.

Individual Settlement Awards will be calculated as follows: first, the Net Settlement Amount will be divided by the total number of weeks worked by all of the Class Members to determine the "weekly amount." Second, the number of weeks worked by each individual Class Member will be multiplied by the "weekly amount" to arrive at each Class Member's Individual Settlement Award.

Your estimated Individual Settlement Award is set forth in Section 7 below.

- **Class Representative Service Payments:** For acting as the Class Representatives, Plaintiffs Valencia and Ortega each will request from the Court an award of \$7,500.00 in recognition of and as compensation for their efforts, such as starting the Actions, volunteering time to assist with the Actions, and providing information and documents, as well as risks they assumed in starting and assisting with the prosecution of the Actions. Because each Class Representative is requesting \$7,500 as a service payment, the total amount requested for the service payments is \$15,000.00. Any amounts ordered by the Court will be paid from the Gross Settlement Amount.
- **Class Counsel's Attorney's Fees and Costs:** Class Counsel will request from the Court no more than one-third (1/3) of the Gross Settlement Amount (\$950,000.00) as attorney's fees for litigation and resolution of the Actions. Class Counsel will also request from the Court reimbursement for litigation costs advanced on behalf of the Class, which are estimated to be no more than \$20,000.00. Any amounts ordered by the Court for Class Counsel's attorney's fees and costs will be paid from the Gross Settlement Amount
- **PAGA Payment:** \$50,000.00 from the Gross Settlement Amount is allocated for payment of civil penalties under the Private Attorneys General Act of 2004. Upon Court approval, 75% of the allocation (\$37,500.00) will be paid to the California Labor & Workforce Development Agency, and 25% (\$12,500.00) of the allocation will be distributed to the Class as part of the Net Settlement Amount.
- **Settlement Administration:** The costs of settlement administration will not exceed \$25,000.00, which pays for tasks such as mailing and tracking this Notice, mailing checks and tax forms, and reporting to the parties and the Court. Any amount ordered by the Court will be paid from the Gross Settlement Amount.

Any Questions? Call toll free number

- All checks issued to Participating Class Members shall remain valid and negotiable for one hundred and twenty (120) days from the date of their issuance. After distribution of the first set of checks, any money corresponding to unclaimed or uncashed checks will be returned to the Net Settlement Amount and re-distributed to the Participating Class Members after the final installment payment. After distribution of the second set of checks, the money corresponding to any unclaimed or uncashed checks will be sent to the California State Controller's Unclaimed Property Fund.

7. WHAT DO I NEED TO DO TO RECEIVE A SETTLEMENT PAYMENT, AND HOW MUCH WILL I RECEIVE?

You do not need to do anything to receive a payment from the settlement.

Mowbray's records show that, while you worked as an hourly-paid/non-exempt employee performing tree trimming related activities during the relevant time period, you worked a total of [Number of Qualifying Workweeks]. Accordingly, your anticipated Individual Settlement Payment is [\$ AMOUNT]. The actual amount may vary somewhat based on the actual implementation of the settlement.

20% of your settlement award will be issued in checks representing unpaid wages with applicable federal, state, and local tax withholdings taken out, and you will be sent an IRS Form W-2 for tax purposes (just like a paycheck). The remaining 80% of your settlement award will be issued in checks representing unreimbursed expenses, penalties and interest, and you will be issued an IRS Form 1099 for tax purposes. You will need to speak with an accountant or other tax professional about any tax issues related to your settlement checks.

If you dispute the information about the amount of your anticipated Settlement Award, you must advise the Settlement Administrator and follow the steps below to substantiate your dispute.

To dispute the amount of your anticipated settlement share you must send in the mail any records (such as paystubs, pay checks or other records) supporting your calculation of the total number of weeks you were employed by Mowbray's between October 1, 2014 and November 30, 2020 as an hourly-paid/non-exempt employee performing tree trimming related activities along with a letter explaining the dispute, and be sure to include the last four digits of your social security number by RESPONSE DATE. The date of the postmark will determine if it was timely mailed. The Settlement Administrator will review the information you submit along with Mowbray's records and make a determination as to the correct amount of your Settlement Award.

The Settlement Administrator is:

The Original Mowbray's Tree Service Settlement Administration

c/o settlement administrator.

Mailing address

8. WHAT AM I GIVING UP TO STAY IN THE CLASS AND GET COMPENSATION?

Any Questions? Call toll free number

Unless you ask to be excluded, you will remain a part of the Settlement Class, and that means you can't sue, continue to sue, or be a part of any other lawsuit or proceeding making any of the same claims and allegations made in the Actions. It also means all of the Court's orders will apply to you and legally bind you.

Unless you ask to be excluded, you will remain a part of the Settlement Class, and that means you can't sue, continue to sue, or be a part of any other lawsuit or proceeding making any of the same claims and allegations made in the Actions. It also means all of the Court's orders will apply to you and legally bind you. If you stay in the Settlement Class, upon final approval of the settlement by the Court, you will be deemed to have released and discharged Mowbray's as well as any and all of its affiliates, employees, directors, officers, shareholders, agents, attorneys, successors and assigns, from any and all claims, causes of action or obligations of any kind or nature whatsoever (including claims that have been or could have been asserted against them in this lawsuit or in any other lawsuit or claim in any other court or forum), that were alleged or could have been alleged based on the factual allegations regarding unpaid wages, missed or non-compliant meal breaks, unreimbursed expenses, and related claims for penalties, alleged in the operative Complaint for the Class Period of October 1, 2014 through November 30, 2020.

This Section only summarizes the Release of Claims. The Stipulation of Settlement contains additional details about the scope of the Release and Released Claims, and you may obtain a copy of the Stipulation of Settlement from the Settlement Administrator or Class Counsel listed below.

9. DO I HAVE A LAWYER IN THIS CASE?

The Court has decided the law firms below are qualified to represent you and the Settlement Class. These law firms are called "Class Counsel."

<p>Crosner Legal, P.C. 433 Camden Drive, Suite 400 Beverly Hills, California 90210 Telephone: (310) 496-5818</p>	<p>Law Offices of Sahag Majarian II 18250 Ventura Blvd. Tarzana, California 91356 (818) 609-0807</p>
<p>Koul Law Firm 3435 Wilshire Blvd., Suite 1710 Los Angeles, California 90010 (213) 761-5484</p>	

If you want to be represented by your own lawyer, you may hire one at your own expense.

10. WHAT IF I DON'T WANT TO PARTICIPATE IN THIS SETTLEMENT?

You have the right to request exclusion from the settlement. To do so, you must submit a written opt out request to the Settlement Administrator at the following address:

The Original Mowbray's Tree Service Settlement Administration

c/o settlement administrator.

Mailing address

Any Questions? Call **toll free number**

A written request for exclusion must clearly state that you do not wish to be included in the settlement and should include sufficient information to enable the Settlement Administrator to identify you, such as your full legal name, home address and telephone number, and last four digits of your social security number. All requests for exclusion must be mailed by first-class mail **no later than RESPONSE DATE** to the Settlement Administrator at the above address. The date of the postmark will determine if your opt out request was timely mailed. Unless you timely request to be excluded from the settlement, you will be bound by the judgment upon final approval of the settlement and payment of the Gross Settlement Amount, including the Release described in this Notice.

If you timely request to be excluded from the settlement, you will not be entitled to receive any payment under the settlement. Class Counsel will not represent your interests if you request to be excluded.

11. WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

Any Class Member who has **not** asked to be excluded from the settlement may object to the proposed settlement either in writing, by appearing at the Final Approval Hearing in person or through an attorney at your own expense, or both. The Final Approval Hearing is scheduled to take place on [REDACTED], 2021, at 10:00 a.m. in Department S-26 of the Superior Court of the State of California for the County of San Bernardino, located at 247 Third Street, San Bernardino, California 92415.

All written objections and supporting papers, if any, should: (1) state your full name, address and telephone number; (2) provide a written statement of all grounds for the objection accompanied by any legal briefs in support for the objection, and (3) clearly identify the case name and number. The case name is “Alejandro Valencia v. The Original Mowbray’s Tree Service, Incorporated” and the case number is “CIVDS1825518.”

You must submit your written objection and all supporting papers, if any, to the Settlement Administrator by mailing to the following address:

The Original Mowbray’s Tree Service Settlement Administration
c/o settlement administrator.
Mailing address

To be valid, your written objection and all supporting papers must be postmarked on or before **RESPONSE DATE**.

If you do not submit a written objection, you may still appear at the Final Approval Hearing and make your objection to the Court.

12. WHAT HAPPENS IF I DO NOT EXCLUDE MYSELF FROM THIS SETTLEMENT?

The settlement, if finally approved by the Court, will bind all Class Members who do not request to be excluded from the settlement whether or not they receive or timely cash their Settlement Awards. Final approval of the settlement will bar any Class Member who does not request to be excluded from the settlement from initiating a lawsuit or proceeding regarding the Released Claims.

Any Questions? Call toll free number

13. WHAT IF MY CONTACT INFORMATION CHANGES?

If, after you receive this Notice, you change your mailing address or telephone number, it is your responsibility to inform the Settlement Administrator of your updated information.

14. THE FINAL APPROVAL HEARING

The Final Approval Hearing is scheduled to take place on [REDACTED], 2021, at 10:00 a.m. in Department S-26 of the Superior Court of the State of California for the County of San Bernardino, located at 247 Third Street, San Bernardino, California 92415. The date and time may change without further notice to the Class.

At the Final Approval Hearing, the Court will make a final decision whether to approve the settlement, and will also decide what amounts will be awarded to the Class Representatives for a service award, and to Class Counsel for attorney's fees and costs.

15. FURTHER INFORMATION

This Notice is only a summary of the settlement. To obtain a copy of the Stipulation of Settlement (which defines the capitalized terms used in this Notice), the Court's Preliminary Approval Order, or the operative complaint filed in the Actions, please contact the Settlement Administrator at toll free number or Class Counsel listed above.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at toll free number or Class Counsel listed above. Please refer to the Original Mowbray's Tree Service Class Action Settlement.

PLEASE DO NOT TELEPHONE OR CONTACT THE COURT WITH QUESTIONS OR FOR INFORMATION REGARDING THIS SETTLEMENT

Any Questions? Call toll free number