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13 Attorneys for Plaintiff
STACY WECKIEWICZ, individually
14 and on behalf of others similarly situated

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF STANISLAUS

17 STACY WECKIEWICZ, individually and on
18 behalf of others similarly situated,

19 Plaintiff,

20 vs.

21 THE SCOTTS COMPANY LLC, an Ohio
limited liability company; THE SCOTTS
22 MIRACLE-GRO COMPANY, an Ohio
corporation; and DOES 1-20, inclusive,
23

24 Defendants.

Case No.: CV-18-001292

[Assigned for all purposes to the Hon. Sonny
S. Sandhu, Dept. 24]

CLASS ACTION

**CLASS ACTION SETTLEMENT
AGREEMENT**

Complaint Filed: June 22, 2018
Trial Date: None.

1 8. “Defendants” mean THE SCOTTS COMPANY LLC and THE SCOTTS
2 MIRACLE-GRO COMPANY.

3 9. “Defense Counsel” means Gordon Rees Scully Mansukhani, LLP.

4 10. “Effective Date” means either (a) the date sixty (60) days after the entry of the
5 Final Judgment and order finally approving the Settlement, if no motions for reconsideration
6 and no appeals or other efforts to obtain review have been filed, or (b) in the event that a
7 motion for reconsideration, an appeal or other effort to obtain review of the Final Judgment and
8 order finally approving the Settlement, the date sixty (60) days after such reconsideration,
9 appeal or review has been finally concluded and is no longer subject to review, whether by
10 appeal, petition for rehearing, petition for review or otherwise and the Settlement has not been
11 materially modified. A “material modification” shall not include any change to the Class
12 Counsel Award, Class Representative Enhancement Award, or amount awarded for Settlement
13 Administration Costs.

14 11. “Gross Settlement Amount” means Two Hundred Seventy-Five Thousand
15 Dollars (\$275,000,000).

16 12. “Individual Settlement Payment” means the amount payable from the Net
17 Settlement Amount to each Settlement Class Member who does not request to be excluded
18 from this Settlement.

19 13. “Net Settlement Amount” means the Gross Settlement Amount, less Class
20 Counsel Award, Class Representative Enhancement Award, Labor Workforce Development
21 Agency’s (“LWDA”) portion of the PAGA Payment, and Settlement Administrator Costs.

22 14. “Notice” means the Notice of Pendency of Class Action Settlement
23 (substantially in the form attached as **Exhibit 1**).

24 15. “PAGA Payment” means a payment made to the California Labor and
25 Workforce Development Agency in exchange for the release of claims under the Private
26 Attorneys General Act of 2004.

27 16. “Parties” means Plaintiff and Defendants, collectively, and “Party” shall mean
28 either Plaintiff or Defendants.

1 17. “Payment Ratio” means the respective Pay Periods for each Settlement Class
2 Member divided by the sum of Total Pay Periods for all Settlement Class Members.

3 18. “Plaintiff” means STACY WECKIEWICZ.

4 19. “Released Claims” means any and all claims alleged in the operative complaint
5 including all debts, liabilities, demands, obligations, guarantees, costs, expenses, attorney’s
6 fees, damages, action or causes of action, contingent or accrued, for, or that relate to the claims
7 alleged in the operative complaint for the Class Period, including but not limited to all wage
8 claims under the California Labor Code, such as those arising under the California Labor Code
9 Sections 201, 202, 203, 218, 218.5, 218.6, 226, 226.3, 226.7, 512, 558, 1174, 1174.5, and civil
10 penalties under the Labor Code Private Attorneys General Act, Cal. Labor Code § 2698, *et seq.*,
11 applicable Industrial Welfare Commission Wage Order(s), Business and Professions Code §
12 17200, *et seq.*, and Civil Code § 3827. The claims released by the Settlement Class shall
13 include, but not necessarily be limited to all claims for unpaid wages, unpaid overtime wages,
14 unpaid double time wages, failure to pay all wages earned every pay period, failure to provide
15 meal or rest periods, unpaid premiums for missed meal or rest periods, untimely payment of
16 wages, inaccurate wage statements, record keeping violations, failure to pay all wages owed
17 upon termination, unfair competition, as well as any damages, restitution, civil penalties,
18 statutory penalties, taxes, interest or attorneys’ fees resulting therefrom.

19 20. “Released Parties” means Defendants, and any parent, subsidiary, affiliate,
20 predecessor or successor, and all agents, employees (current and former), officers, directors,
21 and attorneys.

22 21. “Response Deadline” means the date thirty (30) calendar days after the
23 Settlement Administrator mails the Notice to Settlement Class Members and the last date on
24 which Settlement Class Members may postmark written requests for exclusion or a Notice of
25 Objection to the Settlement. For Settlement Class Members who receive re-mailed Class
26 Notices, the Response Deadline shall mean forty-five (45) calendar days after the Settlement
27 Administrator’s initial mailing of the Notice of Settlement to Class Members.

28 22. “Settlement” means the disposition of the Action pursuant to this Agreement.

1 Settlement Administration Costs, as specified in this Agreement. Except for any employer
2 portion of required taxes due on the Individual Settlement Payments, Defendants shall not be
3 required to pay more than the Gross Settlement Amount.

4 29. First Amended Complaint. For settlement purposes only, Defendants will
5 stipulate to the filing of a First Amended Complaint (“FAC”) for Plaintiff to allege the
6 Released Claims upon the expiration of the sixty-five days (65) days from the time period
7 Plaintiff submits her amended letter to the Labor & Workforce Development Agency to sue for
8 alleged PAGA violations, provided that the Labor & Workforce Development Agency does not
9 take any action to investigate the claims in Plaintiff’s amended letter. Defendants will not be
10 required to file a responsive pleading to the FAC, and Defendants do not impliedly or expressly
11 waive any arguments or defenses to the FAC, including any defense based on the application
12 statute of limitations on any claim or Plaintiff’s alleged failure to properly exhaust her
13 administrative remedies for her PAGA claim. If the Parties’ settlement should not become final
14 for whatever reason, the FAC shall be null and void, and the Complaint shall be deemed the
15 operative complaint, and the Parties will be returned to their respective original positions
16 accordingly. Plaintiff’s counsel shall also provide a draft of the FAC to defense counsel in
17 advance of its filing for their comments to the FAC.

18 30. Release As To All Class Members. As of the Effective Date, Plaintiff and the
19 Settlement Class Members who are not excluded from this Settlement, on behalf of themselves
20 and each of their heirs, representatives, successors, assigns and attorneys, hereby release
21 Defendants and Released Parties from the Released Claims as consideration for Defendants’
22 payment of the Gross Settlement Amount.

23 31. Tax Liability. The Parties make no representations as to the tax treatment or
24 legal effect of the payments called for hereunder, and Settlement Class Members are not
25 relying on any statement or representation by the Parties in this regard.

26 32. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this
27 section, the “Acknowledging Party” and each Party to this Agreement other than the
28 Acknowledging Party, an “Other Party”) acknowledges and agrees that (1) no provision of this

1 Agreement, and no written communication or disclosure between or among the Parties or their
2 attorneys and other advisers, is or was intended to be, nor shall any such communication or
3 disclosure constitute or be construed or be relied upon as, tax advice within the meaning of
4 United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the
5 Acknowledging Party (a) has relied exclusively upon his, her or its own, independent legal and
6 tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not
7 entered into this Agreement based upon the recommendation of any other party or any attorney
8 or advisor to any Other Party, and (c) is not entitled to rely upon any communication or
9 disclosure by any attorney or adviser to any Other Party to avoid any tax penalty that may be
10 imposed on the Acknowledging Party; and (3) no attorney or adviser to any Other Party has
11 imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax
12 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
13 Acknowledging Party of the tax treatment or tax structure of any transaction, including any
14 transaction contemplated by this Agreement.

15 33. Notice and Preliminary Approval of Settlement. As part of this Settlement,
16 Plaintiff will request that the Court: (a) grant preliminary approval of the Settlement, (b) certify
17 a Settlement Class, (c) approve distribution of Notice to Settlement Class Members, and (d)
18 grant final approval of the Settlement. Plaintiff shall request a hearing before the Court to
19 obtain preliminary approval of the Settlement. In conjunction with the hearing, Plaintiff will
20 submit this Agreement, which sets forth the terms of this Settlement, and will include a
21 proposed Notice, as necessary to implement the Settlement.

22 34. Settlement Administration. Within fifteen (15) calendar days after the Court
23 grants preliminary approval of this Agreement, Defendants shall provide the Settlement
24 Administrator with the Class Information for purposes of mailing the Notice to Settlement
25 Class Members.

26 a. Notice By First Class U.S. Mail with Business Reply Mail Postage.

27 Upon receipt of the Class Information, the Settlement Administrator will
28 perform a search based on the National Change of Address Database to update

1 and correct any known or identifiable address changes. Within fifteen (15)
2 calendar days after receiving the Class Information from Defendants as provided
3 herein, the Settlement Administrator shall mail copies of the Notice to all
4 Settlement Class Members via regular First Class U.S. Mail. The Settlement
5 Administrator shall exercise its best judgment to determine the current mailing
6 address for each Settlement Class Member. The address identified by the
7 Settlement Administrator as the current mailing address shall be presumed to be
8 the best mailing address for each Settlement Class Member.

9 i. Undeliverable Notices. Any Notice returned to the Settlement
10 Administrator as non-delivered on or before the Response Deadline shall
11 be re-mailed to the forwarding address affixed thereto. If no forwarding
12 address is provided, the Settlement Administrator shall promptly attempt
13 to determine a correct address by use of skip-tracing, or other search using
14 the name, address and/or Social Security number of the respective
15 Settlement Class Member, and shall then perform a re-mailing, if another
16 mailing address is identified by the Settlement Administrator. If a
17 Settlement Class Member's Notice is returned to the Settlement
18 Administrator more than once as non-deliverable on or before the
19 Response Deadline, then an additional Notice need not be re-mailed and
20 the Settlement Class Member is deemed to have received Notice.

21 b. No Claim Form Necessary. All Settlement Class Members who do not
22 request to be excluded from the Settlement will receive Individual Settlement
23 Payments from the Net Settlement Amount; submission of a claim form is not
24 necessary to receive an Individual Settlement Payment. The estimated Individual
25 Settlement Payments will be stated in the Notice.

26 i. Disputes Regarding Individual Settlement Payments. Settlement
27 Class Members will have the opportunity, should they disagree with
28 Defendants' records regarding their employment dates or Total Pay

1 Periods, to provide documentation and/or an explanation to correct the
2 information and seek modification of their estimated Individual Settlement
3 Payments. The employment dates and Total Pay Periods provided by
4 Defendants are presumed to be correct unless documentation is timely
5 provided to show otherwise. If there is a dispute, the Settlement
6 Administrator will consult with the Parties to determine whether an
7 adjustment is warranted. The Settlement Administrator shall determine the
8 eligibility for, and the amounts of, any Individual Settlement Payments
9 under the terms of this Agreement. If either of the Parties disagree with
10 the Settlement Administrator's determination of a Settlement Class
11 Members' eligibility for, and the amounts of, any Individual Settlement
12 Payment due to a Settlement Class Member, they may request the Court to
13 resolve the Settlement Class Member's dispute. If the dispute is submitted
14 to the Court, the Court's determination of a Settlement Class Members'
15 eligibility for, and the amounts of, any Individual Settlement Payment due
16 to a Settlement Class Member, shall be final and binding on the Settlement
17 Class Member and the Parties.

18 ii. Disputes Regarding Administration of Settlement. Any disputes
19 not resolved concerning the administration of the Settlement will be
20 resolved by the Court, under the laws of the State of California. Prior to
21 any such involvement of the Court, counsel for the Parties will confer in
22 good faith to resolve the disputes without the necessity of involving the
23 Court.

24 c. Exclusions. The Notice shall state that Settlement Class Members who
25 wish to exclude themselves from the Settlement must submit a written request
26 for exclusion by the Response Deadline. The written request for exclusion:
27 (1) must contain the name, address, telephone number and the last four digits of
28 the Social Security number and/or the Employee ID number of the person

1 requesting exclusion, (2) must be signed by the Settlement Class Member;
2 (3) must be postmarked by the Response Deadline and returned to the
3 Settlement Administrator at the specified address; and (4) must describe the
4 Settlement Class Member's intent to request exclusion, opt out, or words to that
5 effect. If a signed request for exclusion is not timely submitted stating the name
6 and address of the Settlement Class Member, it will not be deemed valid for
7 exclusion from this Settlement. The date of the postmark on the return mailing
8 envelope of the request for exclusion shall be the exclusive means used to
9 determine whether the request for exclusion was timely submitted. Any
10 Settlement Class Member who requests to be excluded from the Settlement
11 Class will not be entitled to any recovery under the Settlement and will not be
12 bound by the terms of the Settlement or have any right to object, appeal or
13 comment thereon. Settlement Class Members who fail to submit a valid and
14 timely written request for exclusion on or before the Response Deadline shall be
15 bound by all terms of the Settlement and any Judgment entered in this Action, if
16 the Settlement is finally approved by the Court.

17 i. No later than fourteen (14) calendar days after the Response
18 Deadline, the Settlement Administrator shall provide Defense counsel with
19 a complete list of all Settlement Class Members who have timely
20 submitted written requests for exclusion. However, should the Court
21 require the disclosure of the identities of any Settlement Class Members
22 who have requested exclusion from the Settlement in connection with
23 obtaining final approval of the Settlement, Defendants counsel shall
24 disclose the identities of such persons to the Court and Class Counsel. At
25 no time shall any of the Parties or their counsel seek to solicit or otherwise
26 encourage members of the Settlement Class to submit requests for
27 exclusion from the Settlement.
28

1 d. Objections. The Notice shall state that Settlement Class Members who
2 wish to submit a written objection to the Settlement must mail to the Settlement
3 Administrator a written statement of objection (“Notice of Objection”) by the
4 Response Deadline. The date of the postmark on the return envelope shall be
5 the exclusive means for determining that a Notice of Objection was timely
6 submitted. The Notice of Objection must be signed by the Settlement Class
7 Member and state: (1) the full name of the Settlement Class Member; (2) the last
8 four digits of the Settlement Class Member’s Social Security number and/or the
9 Employee ID number; and (3) the basis for the objection. Class Counsel shall
10 include all objections received and Plaintiff’s response(s) with Plaintiff’s motion
11 for final approval of the Settlement. Class Counsel shall not represent any
12 Settlement Class Members with respect to any such objections. The Notice shall
13 also state that Settlement Class Members may also appear at and raise an
14 objection at the hearing on Final Approval regardless of whether they have
15 submitted a written objection to the settlement.

16 e. No Solicitation of Settlement Objections or Exclusions. The Parties
17 agree to use their best efforts to carry out the terms of this Settlement. At no
18 time shall any of the Parties or their counsel seek to solicit or otherwise
19 encourage Settlement Class Members to submit either Notices of Objection to
20 the Settlement or requests for exclusion from the Settlement, or to appeal from
21 the Court’s Final Judgment.

22 35. Funding and Allocation of Gross Settlement Amount. Within fifteen (15)
23 calendar days after the Effective Date, Defendants shall provide the Gross Settlement Amount
24 to the Settlement Administrator. Payments from the Gross Settlement Amount shall be made,
25 as specified in this Agreement and approved by the Court, for: (1) Individual Settlement
26 Payments to Settlement Class Members who do not request to be excluded, (2) Class
27 Representative Enhancement Award, (3) Class Counsel Award, (4) PAGA Payment, and
28 (6) the Settlement Administration Costs. Defendants’ share of employer taxes on the wage

1 portion of the Individual Settlement Payments will be paid in addition to the Gross Settlement
2 Amount.

3 a. Individual Settlement Payments. Individual Settlement Payments will be
4 paid from the Net Settlement Amount and shall be paid pursuant to the terms set
5 forth herein. Individual Settlement Payments shall be mailed by regular First
6 Class U.S. Mail to the respective Settlement Class Member's last known mailing
7 address within fourteen (14) calendar days after Defendants provide funds to the
8 Settlement Administrator for disbursement under this Agreement. Individual
9 Settlement Payments will be allocated as follows: 33% as penalties, 33% as
10 wages and 33% as interest. Any checks issued to Settlement Class Members
11 shall remain valid and negotiable for one hundred and eighty (180) days from
12 the date of their issuance.

13 i. Calculation of Individual Settlement Payments. Defendants will
14 calculate the Total Pay Periods by each Settlement Class Member. The
15 respective Total Pay Periods for each Settlement Class Member will be
16 divided by the Total Pay Periods for all Settlement Class Members who
17 do not opt out, resulting in the Payment Ratio for each Settlement Class
18 Member. Each Settlement Class Member's Payment Ratio is then
19 multiplied by the Net Settlement Amount to determine his or her
20 Individual Settlement Payment. Each Individual Settlement Payment
21 will be reduced by any legally mandated deductions for each Settlement
22 Class Member. Settlement Class Members (other than Plaintiff) are not
23 eligible to receive any compensation under the Settlement other than
24 Individual Settlement Payments.

25 b. Unpaid Cash Residue or Unclaimed/Abandoned Class Member Funds.
26 Any residue from uncashed Settlement Awards after the expiration date of the
27 Individual Settlement Payments will be transferred to the California State
28

1 Controller's Office and held in trust for such Settlement Class Members
2 pursuant to California Unpaid Property Law.

3 c. Class Representative Enhancement Award. Subject to Court approval, in
4 exchange for the release of all Released Claims, a general release under
5 Section 1542 of the California Civil Code, and for her time and effort in
6 bringing and prosecuting this matter, Plaintiff shall be paid up to Five Thousand
7 Dollars (\$5,000.00), subject to Court approval. The Class Representative
8 Enhancement Award shall be paid to Plaintiff from the Gross Settlement
9 Amount no later than fourteen (14) calendar days after Defendants provide
10 funds to the Settlement Administrator for disbursement under this Agreement.
11 Any portion of the requested Class Representative Enhancement Award that is
12 not awarded to the Class Representative shall be part of the Net Settlement
13 Amount and shall be distributed to Settlement Class Members as provided in
14 this Agreement. The Settlement Administrator shall issue an IRS Form 1099 –
15 MISC to Plaintiff for her Class Representative Enhancement Award. Plaintiff
16 shall be solely and legally responsible to pay any and all applicable taxes on her
17 Class Representative Enhancement Award and shall hold harmless Defendants
18 and Released Parties from any claim or liability for taxes, penalties, or interest
19 arising as a result of the Class Representative Enhancement Award. The Class
20 Representative Enhancement Award shall be in addition to the Plaintiff's
21 Individual Settlement Payment as a Settlement Class Member.

22 d. Class Counsel Award. Defendants agree not to oppose or object to any
23 application or motion by Class Counsel for attorneys' fees not to exceed one-
24 third (1/3) of the Gross Settlement Amount. Defendants also agree not to
25 oppose any application or motion by Class Counsel for the reimbursement of
26 actual costs which are estimated to be up to Eleven Thousand Dollars (\$11,000),
27 subject to submission of records to the Court, associated with Class Counsel's
28 prosecution of this Action from the Gross Settlement Amount, and Class

1 Counsel agrees not to appeal any award of attorneys' fees or costs. Any portion
2 of the requested Class Counsel Award that is not awarded to Class Counsel shall
3 be part of the Net Settlement Amount and distributed to Settlement Class
4 Members as provided in this Agreement. So long as there are no objections,
5 Class Counsel shall be paid any Court-approved fees and costs no later than
6 fourteen (14) calendar days after Defendants provide funds to the Settlement
7 Administrator for disbursement under this Agreement. Class Counsel shall be
8 solely and legally responsible to pay all applicable taxes on the payment made
9 pursuant to this paragraph. The Settlement Administrator shall issue an IRS
10 Form 1099 – MISC to Class Counsel for the payments made pursuant to this
11 paragraph. This Settlement is not contingent upon the Court awarding Class
12 Counsel any particular amount in attorneys' fees and costs.

13 e. PAGA Payment. Twelve Thousand Dollars (\$12,000) shall be allocated
14 to the release of the PAGA claim. From that allocation, the Settlement
15 Administrator shall make the PAGA Payment to the California Labor and
16 Workforce Development Agency in the amount of Nine Thousand Dollars
17 (\$9,000). The PAGA Payment will be paid from the Gross Settlement Amount
18 within fourteen (14) calendar days after Defendants provides funds to the
19 Settlement Administrator for disbursement under this Agreement. The
20 remaining Three Thousand Dollars (\$3,000) of the amount is allocated to the
21 release of Plaintiff's PAGA claim shall be included as part of the Net Settlement
22 Amount for payment to Settlement Class Members.

23 f. Settlement Administration Costs. The Settlement Administrator shall be
24 paid for the costs of administration of the Settlement from the Gross Settlement
25 Amount. The capped cost of administration for this Settlement is Thirteen
26 Thousand Dollars (\$13,000). The Settlement Administrator shall provide the
27 Parties with a declaration to support the cost of administration. The Settlement
28 Administrator shall be paid the Settlement Administration Costs no later than

1 fourteen (14) calendar days after Defendants provide funds to the Settlement
2 Administrator for disbursement under this Agreement. The Settlement
3 Administrator, on Defendants' behalf, shall have the authority and obligation to
4 make payments, credits and disbursements, including in the manner set forth
5 herein, to Settlement Class Members and the Internal Revenue Service,
6 calculated in accordance with the methodology set out in this Agreement and
7 orders of the Court.

8 i. The Parties agree to cooperate in the Settlement Administration
9 process and to make all reasonable efforts to control and minimize the
10 cost and expenses incurred in administration of the Settlement. The
11 Parties each represent they do not have any financial interest in the
12 Settlement Administrator or otherwise have a relationship with the
13 Settlement Administrator that could create a conflict of interest.

14 ii. The Settlement Administrator shall be responsible for:
15 processing and mailing payments to the Plaintiff, Class Counsel,
16 Settlement Class Members, the Internal Revenue Service, the Labor and
17 Workforce Development Agency, California State Treasury; printing and
18 mailing the Notice to the Settlement Class Members, as directed by the
19 Court; receiving and reporting the requests for exclusion and Notices of
20 Objection submitted by Settlement Class Members; completing all tax
21 reporting, withholdings, and payments to the Internal Revenue Service;
22 distributing all tax forms for payments under this Agreement; providing
23 declaration(s) and reports as necessary in support of preliminary and
24 final approval of this Settlement; and other tasks as the Parties mutually
25 agree or the Court orders the Settlement Administrator to perform both
26 before and after distribution of the Gross Settlement Amount. The
27 Settlement Administrator shall keep the Parties timely apprised of the
28 performance of all Settlement Administrator responsibilities.

1 g. No person shall have any claim against Defendants, Defense Counsel,
2 Plaintiff, Settlement Class Members, Class Counsel or the Settlement
3 Administrator based on distributions and payments made in accordance with this
4 Agreement.

5 36. Final Settlement Approval Hearing and Entry of Final Judgment. Upon
6 expiration of the Response Deadline, with the Court's permission, a Final Approval/Settlement
7 Fairness Hearing shall be conducted to determine final approval of the Settlement along with
8 the amount properly payable for (i) the Class Counsel Award, (ii) the Class Representative
9 Enhancement Award, (iii) Individual Settlement Payments, (iv) the Settlement Administration
10 Cost, and (v) the PAGA Payment. Pursuant to California Rule of Court 3.769(h), after granting
11 final approval, the Court shall retain jurisdiction over the Parties to enforce the terms of the
12 judgment.

13 37. Defendants' Option to Terminate Settlement. If more than five percent (5%) of
14 all Settlement Class Members submit written requests for exclusion from the Settlement,
15 Defendants shall have, in their sole discretion, the option to terminate this Settlement. In such
16 case, Defense Counsel will notify Class Counsel of its decision to terminate the Settlement
17 within twenty-one (21) calendar days following a final report by the Settlement Administrator
18 of the number of requests for exclusion. Further, to the extent Defendants have made any
19 payments under this Agreement, all payments shall be fully refunded to Defendants, except that
20 any fees already incurred by the Settlement Administrator shall be paid by Defendants, and the
21 Parties shall proceed in all respects as though this Agreement had not been executed.

22 38. Defendants' Representations and Duty to Augment Settlement. As of July 2021,
23 Defendants represent that the Class includes approximately 457 Class Members working
24 approximately 13,744 pay periods. To the extent the number of class members or pay periods
25 increases by more than 10% by the close of the class period, Defendants shall be required to
26 increase the Gross Settlement Amount by the greater of the two percentages that the number of
27 class members or pay periods has increased over 10% (i.e., if the number of class members
28 increases by 12% and the pay periods increases by 15% by the date of the distribution of the

1 notice of class settlement, then Defendants will be required to increase the Gross Settlement
2 Amount by 5%). Any increase in the Gross Settlement Amount as a result of this provision
3 shall be the sole responsibility of Defendants.

4 39. Nullification of Settlement Agreement. In the event: (i) the Court does not enter
5 an order for preliminary approval; (ii) the Court does not enter an order for final approval;
6 (iii) the Court does not enter a Final Judgment, (iv) the Effective Date is not triggered, or
7 (v) the Settlement does not become final for any other reason, this Settlement Agreement shall
8 be null and void and any order or judgment entered by the Court in furtherance of this
9 Settlement shall be treated as void from the beginning. In such case, Defendants shall not make
10 any payment under this Agreement, and the Parties shall proceed in all respects as if this
11 Agreement had not been executed, except that any fees already incurred by the Settlement
12 Administrator shall be paid by the Parties in equal shares.

13 40. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Settlement
14 Class Members pursuant to this Agreement shall be deemed not to be pensionable earnings and
15 shall not have any effect on the eligibility for, or calculation of, any of the employee benefits
16 (e.g., vacations, holiday pay, retirement plans, etc.) of the Plaintiff or Settlement Class
17 Members.

18 41. Publicity. Plaintiff and Class Counsel agree not to file a press release regarding
19 the settlement, respond to press/media inquiries regarding the settlement prior to the Court
20 granting Final Approval of the settlement, or otherwise publicize the terms of this Settlement,
21 except in Court filings. Plaintiff will not disparage Defendants or their counsel. Plaintiff will
22 not speculate about the motivations behind the decision of Defendants to settle this Action.

23 42. No Admission By Defendants. Defendants deny any and all claims alleged in
24 this Action and denies all wrongdoing whatsoever. This Agreement is not a concession or
25 admission of any liability or wrongdoing by Defendants, and it shall not be used against
26 Defendants as an admission with respect to any claim of fault, concession or omission by
27 Defendants.

28 43. Exhibits and Headings. The terms of this Agreement include the terms set forth

1 in the attached exhibit, which is incorporated by this reference as though fully set forth herein.
2 The exhibit to this Agreement is an integral part of the Settlement; however, the terms of this
3 Agreement control in case of conflict. The descriptive headings of any paragraphs or sections
4 of this Agreement are inserted for convenience of reference only.

5 44. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the
6 Action, except such proceedings necessary to implement and complete the Settlement, pending
7 the Final Approval/Settlement Fairness Hearing to be conducted by the Court.

8 45. Amendment or Modification. This Agreement may be amended or modified
9 only by a written instrument signed by counsel for all Parties or their successors-in-interest.

10 46. Entire Agreement. This Agreement and the attached exhibit constitute the entire
11 Agreement among these Parties, and no oral or written representations, warranties or
12 inducements have been made to any Party concerning this Agreement or its exhibit other than
13 the representations, warranties and covenants contained and memorialized in the Agreement
14 and its exhibit.

15 47. Authorization to Enter Into Settlement Agreement. Counsel for the Parties
16 warrant and represent they are expressly authorized by the Party whom they each represent to
17 negotiate this Agreement and to take all appropriate actions required or permitted to be taken
18 by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
19 documents required to effectuate the terms of this Agreement. The Parties and their counsel
20 will cooperate with each other and use their best efforts to effect the implementation of the
21 Settlement. In the event the Parties are unable to reach an agreement on the form or content of
22 any document needed to implement the Settlement, or on any supplemental provisions that may
23 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance
24 of the Court to resolve such disagreement. The person signing this Agreement on behalf of
25 Defendants represents and warrants that he/she is authorized to sign this Agreement on behalf
26 of Defendants. The person signing this Agreement on behalf of Plaintiff represents and
27 warrants that he/she is authorized to sign this Agreement and that he/she has not assigned any
28 claim, or part of a claim, covered by this Settlement to a third-party.

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Dated: 12/9/2021

**CLASS COUNSEL
MAKAREM & ASSOCIATES, APLC**

By: *Daniel Bass*
Ronald W. Makarem
Daniel J. Bass
Attorneys for Plaintiff

Dated: December 8, 2021

DEFENDANTS

By: 
Gregory Liening
Vice President, Tax & Risk
for THE SCOTTS COMPANY LLC AND THE
SCOTTS MIRACLE-GRO COMPANY

Dated: December 9, 2021

**GORDON REES SCULLY MANSUKHANI,
LLP**


By: 
Dina Glucksman
Peter Choi
Attorneys for Defendants THE SCOTTS
COMPANY LLC AND THE SCOTTS
MIRACLE-GRO COMPANY

EXHIBIT 1

NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT

If you are or were employed by Defendants THE SCOTTS COMPANY LLC, and/or THE SCOTTS MIRACLE-GRO COMPANY in California as a non-exempt hourly Merchandiser/Counselor at any time between December 1, 2015 up through September 30, 2021 a class action settlement may affect your rights.

A court authorized this Notice in the matter of STACY WECKIEWICZ, et al. v. THE SCOTTS COMPANY LLC, et al. Stanislaus County Superior Court, Case No. CV-18-001292

Your legal rights may be affected by this Settlement. Please read this Notice carefully.

Plaintiff STACY WECKIEWICZ (“Plaintiff”), on behalf of herself and other similarly situated employees, brought a law suit against Defendants THE SCOTTS COMPANY LLC, and/or THE SCOTTS MIRACLE-GRO COMPANY, (collectively referred to as “Defendants”), for failure to pay overtime wages, failure to provide meal and rest periods, failure to pay minimum wages, failure to provide accurate wage statements, failure to pay all wages earned, failure to maintain required records, failure to pay earned wages upon termination, failure to indemnify for expenses, violations of Business & Professions Code section 17200, and civil penalties under the Labor Code Private Attorneys General Act, Cal. Labor Code § 2698, *et seq.* (“Action”). Defendants strongly deny any and all claims alleged in the Action and deny any and all wrongdoing and liability. The proposed Settlement is not a concession or admission by Defendants that the Action has any merit whatsoever. The Court has not ruled on the merits of Plaintiff’s claims.

The Court has preliminarily approved the Settlement in this Action and determined that there is sufficient evidence to suggest that the proposed Settlement is fair, adequate, and reasonable. If you qualify as a Settlement Class Member, you may receive money from the Settlement. A final determination will be made by the Court at a Final Approval/Settlement Fairness Hearing.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	You will be paid your Individual Settlement Payment in exchange for releasing the Released Claims against Defendants and Released Parties (see Section 11).
EXCLUDE YOURSELF	You will not be paid your Individual Settlement Payment, and you will retain any rights to sue for the Released Claims against Defendants. You will not be able to object to the Settlement.
DISPUTE THE NUMBER OF TOTAL WORK WEEKS WORKED	If you dispute the listed number of pay periods that you worked as a non-exempt hourly employee for DEFENDANTS in California at any time between December 1, 2015 up through preliminary approval (“Class Period”), you may contact the Settlement Administrator to provide additional information and resolve the dispute. You will be paid your Individual Settlement Payment, or an adjusted amount.
OBJECT	You will tell the Court why you don’t agree with the Settlement, following the procedures described more fully below in Section 13. The Court may or may not agree with your objection. However, if the Court does not agree with your objection, you may still be paid your Individual Settlement Payment.
HOW MUCH CAN I GET?	The number of pay periods that you worked as a non-exempt employee for Defendants in California during the Class Period (“ Total Pay Periods ”) is _____. Your estimated Individual Settlement Payment is \$_____.

1. Why Did I Get This Notice?

You are not being sued. Plaintiff sued DEFENDANTS in a class and representative action on behalf of current and former non-exempt hourly employees of DEFENDANTS in California. Records show that you worked for DEFENDANTS in California as a non-exempt hourly Merchandiser/Counselor employee at some during the Class Period of between December 1, 2015 up through September 30, 2021.

You received this Notice because you have a right to know about the proposed Settlement and your options before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, the Settlement Administrator appointed by the Court will make all payments approved by the Court. This Notice explains the Action, the Settlement, your legal rights, what benefits are available, who is eligible to receive them, and how to receive payment.

2. What Is This Action About?

Plaintiff was a non-exempt hourly Merchandiser/counselor who worked for Defendants in California during the Class Period. On **June 22, 2018**, Plaintiff filed a putative class action against DEFENDANTS for various alleged wage and hour violations; including: for failure to pay overtime wages; failure to provide meal and rest periods; failure to pay minimum wages; failure to provide accurate wage statements; failure to pay all wages earned; failure to maintain required records; failure to pay earned wages upon termination; failure to indemnify for expenses; for unlawful wage deductions; and for violations of Business & Professions Code section 17200 **and the Private Attorneys General Act, Cal. Labor Code § 2698, et seq.** Thereafter, the parties reached an agreement to resolve Plaintiff's claims. The Court has preliminarily approved Plaintiff to represent the Settlement Class. However, the Court has not made any findings with respect to the merits of Plaintiff's claims.

3. Do I Need to Hire an Attorney?

You do not need to hire your own attorney. The Court has already preliminarily appointed Class Counsel (see Section 15). However, you may hire your own attorney at your own expense if you choose to do so.

4. What Is DEFENDANTS' Position?

DEFENDANTS deny any wrongdoing or liability whatsoever and deny that wages, damages, or penalties are owed, or that they acted contrary to California law. DEFENDANTS believe that they have valid defenses to Plaintiff's claims. By agreeing to settle, DEFENDANTS are not admitting liability on any of the factual or legal allegations in the Action, or that the Action can proceed as a class or representative action. DEFENDANTS have agreed to settle the Action as a compromise with Plaintiff and Class Counsel.

5. Why Is There a Settlement?

The Court did not decide in favor of Plaintiff or DEFENDANTS. After a thorough investigation into the facts of this Action, the parties agreed to the Settlement following extensive negotiation over the course of several months. The Action settled because Class Counsel and Plaintiff believe that the amount of the Settlement is fair, adequate, and reasonable in light of the strengths and weaknesses of the claims and other factors present and potential in this Action.

6. What Does the Settlement Provide?

Settlement Class Members who do not timely send a valid request for exclusion to the Settlement Administrator will receive Individual Settlement Payments from the Net Settlement Amount (“NSA”). The NSA is the portion of the Gross Settlement Amount (“GSA”) available for distribution to Settlement Class Members, after deductions ordered by the Court in its final approval, as discussed below.

The GSA is \$275,000. From the GSA, Class Counsel will ask the Court to award attorneys’ fees in the amount of \$91,666.66, which represents approximately one-third of the GSA, and actual litigation costs of up to \$11,000. Class Counsel will also ask the Court to authorize an Enhancement Award to be paid to Plaintiff from the GSA in the amount of \$5,000, in order to compensate Plaintiff for the risks, time, and expense of Plaintiff’s involvement in the Action. This payment is in addition to any Individual Settlement Payment that Plaintiff is otherwise entitled to as a Settlement Class Member. The Settlement Administrator will also be paid for the expense of notifying the Settlement Class Members of the Settlement, processing forms and requests for exclusions, distributing all payments, and completing all tasks related to the administration of this Settlement. Settlement Administration Costs are estimated to be less than \$12,000 and will be paid from the GSA.

7. What Can I Get From the Settlement?

Settlement Class Members (who do not request to be excluded) will be paid from the Net Settlement Amount; 50% of each Individual Settlement Payment will be designated for alleged unpaid wages, for which an IRS Form W-2 shall be issued; 25% will be designated for alleged penalties, for which an IRS Form 1099 shall be issued; and 25% will be designated for alleged interest, for which an IRS Form 1099 shall be issued, as appropriate. Individual Settlement Payments from the Net Settlement Amount are subject to any applicable tax withholdings. The amount of tax withholding from your Individual Settlement Payment may or may not be sufficient to cover your applicable tax obligations to the Internal Revenue Service. Please consult your tax adviser, as needed. Neither the named parties nor any counsel in this Action make any representations as to the tax treatment of Individual Settlement Payments provided by the Settlement.

8. How Was My Individual Payment Amount Calculated?

The Net Settlement Amount is estimated at \$ [REDACTED].

The Settlement Administrator calculated each Settlement Class Member’s Individual Settlement Payment by: (1) calculating the Total **Pay Periods** Worked for each Settlement Class Member during the Class Period; and (2) dividing each respective Settlement Class Member’s Total **Pay Periods** Worked by the Total **Pay Periods** Worked by Settlement Class Members during the Class Period as allocated between the time frames listed above, which resulted in a Payment Ratio for each Settlement Class Member. Each Settlement Class Member’s Payment Ratio is then multiplied by the NSA to determine his or her Individual Settlement Payment. Each Individual Settlement Payment will be reduced by any legally mandated deductions (e.g., payroll taxes, etc.), for each Settlement Class Member.

Settlement Class Members who submit valid and timely requests for exclusion will not be entitled to receive Individual Settlement Payments. The estimated Individual Settlement Payments allocated to those individuals will be redistributed to other Settlement Class Members, as calculated by the Settlement Administrator to reflect proportionally increases to the payments for Settlement Class Member who do not request exclusion such that the aggregate of settlement payout to Settlement Class Members equals 100% of the NSA.

9. How Can I Get Payment?

You do not need to take any action to qualify for payment. However, if you dispute the number Total **Pay Periods** Worked, as stated above, you may contact the Settlement Administrator with the details of your dispute, including

any supporting information or documentation, no later than [date]. If you do nothing, you will receive your Individual Settlement Payment calculated based on the Total Pay Periods Worked as identified in this Notice and be bound by the terms of the Settlement (including the Released Claims described in Section 11).

10. When Would I Get My Payment?

The Court will hold the Final Approval/Settlement Fairness Hearing on [date] in Department 24 of the California Superior Court for the County of Stanislaus, located at 801 10th Street, Modesto, California, 95354, to decide whether to grant final approval of the Settlement and enter final judgment. This hearing date is subject to continuance without further notice. If the Court grants final approval of the Settlement, your Individual Settlement Payment will be mailed after entry of Final judgment, unless there are objections, appeals, or other challenges to the Settlement, the Final Judgment or otherwise. The "Payment Date" for your Individual Settlement Payment will be 10 business days after the "Funding Date" for the settlement. The "Funding Date" is the date upon which the settlement funds are due under the settlement. Settlement checks will be void unless cashed within 180 days of issuance. The funds from any uncashed checks will be distributed to the California Controller's Office pursuant to the California Unpaid Property Law.

11. What Rights Do I Give Up If I Participate or Do Nothing?

Unless you submit a timely and valid request for exclusion from the Settlement, you will remain a Settlement Class Member, and you will be bound by the terms of the Settlement, including releasing the Released Claims against DEFENDANTS and Released Parties. It also means that all of the Court's orders will apply to you and legally bind you.

Unless you submit a valid and timely request for exclusion, you shall be deemed to fully and finally release and discharge DEFENDANTS, and any parent, subsidiary, affiliate, predecessor or successor, and all agents, employees (current and former), officers, directors, and attorneys ("Released Parties") from any and all claims alleged in the operative complaint including all debts, liabilities, demands, obligations, guarantees, costs, expenses, attorney's fees, damages, action or causes of action, contingent or accrued, for, or that relate to the claims alleged in the operative complaint for the Class Period, including but not limited to all wage claims under the California Labor Code, such as those arising under the California Labor Code Sections 201, 202, 203, 218, 218.5, 218.6, 226, 226.3, 226.7, 512, 558, 1174, 1174.5, and civil penalties under the Labor Code Private Attorneys General Act, Cal. Labor Code § 2698, *et seq.*, applicable Industrial Welfare Commission Wage Order(s), Business and Professions Code § 17200, *et seq.*, and Civil Code § 3827 ("the Released Claims"). The claims released by the Settlement Class shall include, but not necessarily be limited to all claims for unpaid wages, unpaid overtime wages, unpaid double time wages, failure to pay all wages earned every pay period, failure to provide meal or rest periods, unpaid premiums for missed meal or rest periods, untimely payment of wages, inaccurate wage statements, record keeping violations, failure to pay all wages owed upon termination, unfair competition, as well as any damages, restitution, civil penalties, statutory penalties, taxes, interest or attorneys' fees resulting therefrom.

12. How Do I Exclude Myself from the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself by submitting a written request for exclusion no later than [date]. The written request for exclusion: (1) must contain the name, address, telephone number and the last four digits of the Social Security number and/or the Employee ID number of the person requesting exclusion, (2) must be signed by the Settlement Class Member; (3) must be postmarked no later than [date] and returned to the Settlement Administrator at the address listed below; and (4) must describe the Settlement Class Member's intent to request exclusion, opt out, or words to that effect.

Settlement Administrator
Address
Phone: (***) ***-****

If you submit a valid and timely request for exclusion, you shall be barred from participating in the Settlement. You may not object and will not receive an Individual Settlement Payment. You will retain all rights you may have against DEFENDANTS.

13. How Do I Object to the Settlement and Appear at the Final Approval and Fairness Hearing?

To object, you may submit a valid and timely written objection to the Settlement Administrator listed in Section 12, no later than [date]. The written objection must be signed by the Settlement Class Member and state: (1) the full name of the Settlement Class Member; (2) the last four digits of the Settlement Class Member's Social Security number and/or the Employee ID number; and (3) the basis for the objection. If you do not submit a written objection, you are still entitled to appear at the Final Approval Hearing to state your objection with the Court. If the Court rejects your objection, you will be bound by the terms of the Settlement. You do not have to attend the Final Approval Hearing, but you may do so at your own expense. If you send an Objection, you do not have to come to Court to talk about it.

14. When Is the Final Approval and Fairness Hearing?

The Court will hold a Final Approval/Settlement Fairness in Department 24 of the California Superior Court for the County of Stanislaus, located at 801 10th Street, Modesto, California, 95354, on [date] to determine whether the Settlement is fair, reasonable, and adequate. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing, but you may do so at your own expense. Notice of the final judgment will be on file with the Clerk of the Court and posted on [settlement administrator website].

15. How Do I Get Additional Information?

This Notice provides a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should consult the Class Action Settlement Agreement between Plaintiff and DEFENDANTS, which is on file with the Clerk of the Court. Additionally, the pleadings and other records in this Action may be examined at any time during regular business hours at the Office of the Clerk of the California Superior Court for the County of Stanislaus, located at 801 10th Street, Modesto, California, 95354. If you have any questions, you may contact the Settlement Administrator or Class Counsel.

CLASS COUNSEL	COUNSEL FOR DEFENDANT
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PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

BY ORDER OF THE COURT.