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11 Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14

15 SALOMON CASIQUE, individually,  
and on behalf of all others similarly  
16 situated;  
JESUS HERRERA, individually, and on  
17 behalf of all others similarly situated;  
SABINO NUNGARAY, individually,  
18 and on behalf of all others similarly  
situated;  
19 JOSE MANUEL CERVANTES,  
individually, and on behalf of all others  
20 similarly situated;

21 Plaintiffs,

22 vs.

23 VALLEYCREST LANDSCAPE  
DEVELOPMENT, INC., a California  
24 corporation;  
and DOES 1 through 10, inclusive,  
25  
26 Defendants.

Case No.: CV09-9114 GHK (SSx)

Hon. GEORGE H. KING

CLASS ACTION

**DECLARATION OF H. SCOTT  
LEVIANT IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Date: August 1, 2011

Time: 9:30 a.m.

Place: Courtroom 650

Date Removed: December 11, 2009



1 Nungaray (along with dismissed plaintiff Salomon Casique) filed the present class  
2 action on October 14, 2009 in Los Angeles County Superior Court against  
3 Defendant.

4         6.       The First Amended Complaint alleges that, with respect to Defendant's  
5 Mechanics, Foreman, Laborers and Superintendents working for Defendant in  
6 California, Defendant, (1) failed to pay them minimum and union wages in alleged  
7 violation of Labor Code sections 1194 and 1198, (2) failed to pay overtime  
8 compensation in alleged violation of Labor Code §§1194 and 1198, and failed to  
9 pay overtime pursuant to applicable collective bargaining agreements, (3) failed to  
10 provide meal periods in alleged violation of Labor Code sections 226.7 and 512, (4)  
11 failed to provide rest breaks in alleged violation of Labor Code sections 226.7 and  
12 512; (5) failed to reimburse business expenses in violation of Labor Code §2802;  
13 (6) failed to provide accurate itemized wage statements in alleged violation of  
14 Labor Code section 226; (7) failed to pay all wages due and owing at the time of  
15 termination in alleged violation of Labor Code §203; (8) failed to pay vested  
16 vacation wages; (9) violated the Unfair Competition Law ("UCL") set forth at  
17 California Business and Professions Code section 17200 *et seq.*, and (10) violation  
18 of Penalties Pursuant To Cal. Labor Code §2699 ("PAGA").

19         7.       Defendant removed the Action to the United States District Court for  
20 the Central District of California on December 11, 2009 pursuant to 28 U.S.C.  
21 §1331 based upon the existence of federal questions (complete preemption pursuant  
22 to the Employment Retirement Security Act and the Labor Management Relations  
23 Act).

24         8.       I drafted written discovery, including multiple sets of Interrogatories  
25 and Requests for Production.

26         9.       On May 5, 2010, the Court approved a Stipulation between the Parties  
27 dismissing Salomon Casique from the action, and dismissing without prejudice all  
28 allegations asserted on behalf of individuals holding a Superintendent job title.

1 That dismissal occurred after counsel for Defendant VALLEYCREST  
2 LANDSCAPE DEVELOPMENT, INC. advised me that Plaintiff Salomon Casique  
3 was an exempt employee for the entire duration of the available class period. I  
4 conducted discovery, in the form of Interrogatories, to confirm the accuracy of  
5 Defendant's representation about Mr. Casique's exempt status. Defendant  
6 provided a verified discovery response that confirmed Mr. Casique's classification  
7 as an exempt supervisor during the entire proposed class period commencing four  
8 years prior to the filing of the Complaint. In addition to that discovery, I learned  
9 through interviews with other Superintendents that Mr. Casique's position was  
10 essentially unique at the Lopez Canyon facility where he worked, making it  
11 difficult, if not impossible, to credibly state a sub-class of Superintendents.

12 10. On August 9, 2010, counsel for the Parties voluntarily attended  
13 mediation before Hon. Eward Infante (Ret.), an independent neutral with extensive  
14 experience mediating employment and wage and hour class action cases. Through  
15 the assistance of Hon. Edward Infante, the Parties were able to reach a Settlement.

16 11. On February 25, 2011, the Court issued an Order conditionally  
17 certifying a settlement class, preliminarily approving the proposed settlement,  
18 approving notice to the class, and setting the hearing for final approval of the  
19 proposed class action settlement. In compliance with that Order, the key terms of  
20 the settlement, including the aggregate settlement amount, the requested  
21 enhancement, the likely costs and the proposed attorneys' fees were disclosed to  
22 the Class Members in the Notice issued to Class Members.

23 12. The Parties recognize that the issues presented in the Action are likely  
24 only to be resolved with extensive and costly pretrial proceedings and that further  
25 litigation will cause inconvenience, distraction, disruption, delay and expense  
26 disproportionate to the potential benefits of litigation and have taken into account  
27 the risk and uncertainty of the outcome inherent in any litigation.  
28



1 costs of administering the Settlement. (Stipulation, ¶¶ 30, 52(e).)  
2 A Claimant's share will be calculated by first determining a per  
3 shift recovery factor ("Shift Recovery Factor"): divide an  
4 amount equal to the NSA by the total number of shifts worked  
5 during the Class Period by Laborers, Leadmen and Mechanics  
6 that are members of the Settlement Class, weighted by the  
7 average hourly rate of pay for each job classification. Then a  
8 Settlement Payment for each Qualified Claimant shall be  
9 calculated by multiplying his or her job classification average  
10 hourly rate of pay by the number of shifts worked by the  
11 Qualified Claimant during the Class Period and multiplying the  
12 result by the Shift Recovery Factor. (Stipulation, ¶ 52(f).)

- 13 (f) If less than 30% of the Net Settlement Fund is claimed,  
14 Claimant's shares will be increased on a pro rata basis, so that at  
15 least 30% of the Net QSF is claimed. (Stipulation, ¶ 52(e).)
- 16 (g) The PAGA Penalty Payment amount of \$5,000 shall be paid to  
17 the LWDA.
- 18 (h) Subject to the Court's approval, Defendant is to pay Plaintiffs an  
19 enhancement/service award payment of \$2,000 each.  
20 (Stipulation, ¶ 52(b).)
- 21 (i) Subject to the Court's approval, the Claims Administrator will  
22 be paid out of the fund for administration expenses, which  
23 expenses are currently estimated at \$20,000. (Stipulation, ¶  
24 52(c).)
- 25 (j) Pursuant to the Settlement Agreement, Plaintiffs are to file a  
26 First Amended Complaint (FAC), which Plaintiffs will seek to  
27 submit concurrently with the filing of this Motion. The FAC  
28 adds claims for penalties payable to the LWDA under PAGA

1 and reforms the class definition. (Stipulation, ¶ 49.) This claim  
2 was investigated before the mediation, and was negotiated and  
3 settled at the mediation.  
4

5 BY GRANTING PRELIMINARY APPROVAL, THE COURT HAS  
6 PRELIMINARILY DETERMINED THAT THE SETTLEMENT IS FAIR, JUST  
7 AND REASONABLE

8 14. Plaintiffs and their counsel have diligently investigated the claims of  
9 the Class Members. Plaintiffs and Class Counsel concluded, after taking into  
10 account the disputed factual and legal issues involved in this Action, the substantial  
11 risks attending further prosecution, including risks related to the outcome of a  
12 contested motion for class certification, and the substantial benefits to be received  
13 pursuant to the compromise and settlement of the Action as set forth in the  
14 Agreement, that settlement on the terms agreed to are in the best interest of  
15 Plaintiffs and the Class and are fair and reasonable. Plaintiffs' counsel brought to  
16 bear a great deal of experience in negotiating the settlement of this case.

17 15. We conducted extensive internal and formal investigations regarding  
18 the instant matter. We also interviewed Class Members. We also conducted  
19 extensive investigations for the preparation of objections and responses to formal  
20 discovery and prosecution and defense of the case, which included reviewing  
21 documents relating to Defendant's compensation policies and procedures,  
22 employee handbooks, job descriptions and other corporate policies and procedures  
23 relevant to the issues herein. Finally, Defendant has produced, and Class Counsel  
24 has analyzed, shift data and timesheets of the Class Members ("Mediation Data").  
25 Defendant represented at the time it was produced and continues to represent that  
26 the Mediation Data was not known by Defendant to be erroneous, and Defendant  
27 believes that it is reliable information extracted from the books and records of  
28 Defendant.

1           16. One fundamental purpose of the class action device is to promote  
2 efficiency. This settlement is objectively reasonable. Just as significantly, that  
3 reasonable settlement was obtained without unduly protracted and contentious  
4 litigation. The potential for prompt resolution benefits the class members, since  
5 they do not have to wait years for a similar recovery. The efficiency of this  
6 litigation benefits the Court, the parties and their counsel. But this result would not  
7 have been possible were it not for the reputation that Plaintiffs' counsel has  
8 developed over decades of employment law litigation. Because that experience  
9 was undeniably a factor that contributed to a prompt but efficient resolution of this  
10 action, Plaintiffs' counsel should be rewarded for the combination of skill and  
11 discretion that led to this beneficial settlement.

12           17. Plaintiffs, our co-counsel and I have engaged in the necessary  
13 investigation in this case that made it possible for us to exercise informed judgment  
14 in those aspects of the settlement process in which we were involved. Additionally,  
15 Mr. Ira Spiro brought to bear, in the settlement conference and settlement  
16 conference process, years of experience dealing with state wage and hour laws and  
17 regulations and legal developments regarding class certification.

18           18. In addition to disputing the merits of Plaintiffs' claims,  
19 VALLEYCREST would strongly challenge any request for class certification.  
20 VALLEYCREST believed that Plaintiffs could not certify a class. Plaintiffs  
21 believe that their case is suitable for class certification in that there were facility-  
22 wide policies and practices that affected all of VALLEYCREST's non-exempt  
23 employees. Plaintiffs further believe that those policies and practices could be  
24 established using representative testimony and declarations from class members, as  
25 well as the policies and procedures reflected in the documents produced by  
26 VALLEYCREST during discovery. However, while Plaintiffs assert their belief  
27 that this is a legitimate case for certification, Plaintiffs realize that there is always a  
28 significant risk associated with class certification proceedings, and those risks

1 appear to be very high in this case. Moreover, I determined that the scope of the  
2 class originally proposed was overly broad and required revision to conform with  
3 discovered facts. The revised class, which focuses on operations at a specific  
4 facility, the Lopez Canyon Facility where Plaintiffs were employed, impacts a class  
5 of approximately 745 individuals.

6 19. The Settlement Agreement is the product of arm's-length negotiations  
7 between the Parties occurring throughout the litigation. In light of the uncertainties  
8 of protracted litigation and the state of the law regarding the legal positions of the  
9 Parties, the settlement amount reflects the best feasible recovery for the Class  
10 Members. The settlement amount is, of course, a compromise figure, affected by  
11 many uncertainties. By necessity it took into account risks related to liability,  
12 damages, and all the defenses asserted by the VALLEYCREST. Moreover, each  
13 Class Member will be given the opportunity to opt out of the Settlement, allowing  
14 those who feel they have claims that are greater than the benefits they can receive  
15 under this Settlement, to pursue their own claims. However, the bottom line is that  
16 the settlement amount is, on a per capita basis, comparable to many other wage &  
17 hour class action settlements. **For the approximate 745 members of the class,**  
18 **the average gross recovery is \$335 per class member, the equivalent of about 1**  
19 **meal period premium every week for over 8 months for a typical laborer.**

20 Given the strong case that Defendant could bring to bear to defeat certification and  
21 challenge the merits of this action, this is not an inconsequential sum in these  
22 challenging economic times.

23 20. Our assessment of the reasonableness of the settlement is based on  
24 reliable data. As part of the preparation for the mediation of this matter,  
25 VALLEYCREST agreed to provide Plaintiffs' counsel with data. That data  
26 included wage rates, shift counts, class size and samples of time records. The data  
27 allowed us to prepare informed calculations about the frequency of various  
28 occurrences.

1           21. Rest period claims are notoriously hard to certify, and establishing the  
2 requisite wilfulness for the penalty claims reduced the value of those claims  
3 substantially for settlement purposes. Thus, the claims for missed meal periods and  
4 off-the-clock work when collecting equipment at the facility comprise the stronger  
5 claims in this action. But our investigations confirmed that, at best, these events  
6 did not happen to every settlement class member every day. Moreover, because the  
7 time records appeared to contradict these claims, Plaintiffs faced substantial risk if  
8 these claims were forced to a judicial determination. Although Plaintiffs believe  
9 that they could have prevailed, there was a substantial likelihood that Plaintiffs  
10 would not prevail on those arguments. Because rest breaks are governed by the  
11 “make available” standard, and are inherently more flexible than meal periods, the  
12 likelihood of certifying a rest break claim is far less certain than certifying a meal  
13 period claim under any of the current, competing standards governing meal period  
14 claims. The uncertainty in all of plaintiff’s claims rendered the “wilfulness”  
15 standard under Labor Code § 203 difficult or impossible to establish. Thus, the  
16 theoretical maximum liability for those claims is suspect. Focusing on the  
17 strongest claims, the meal period and unpaid wages (overtime/off-the-clock)  
18 claims, the settlement represents approximately 57% of the estimated maximum  
19 exposure (calculated from data, documents and settlement class member  
20 interviews), an eminently fair and reasonable compromise prior to class  
21 certification. When the risks of prevailing at both certification and trial are  
22 factored into the equation, the settlement value is that much more supportable.  
23 Notably, the assigned certification probabilities above slightly exceed the rate of  
24 certification in contested motions in California superior courts over the past 5 years  
25 (the only courts for which such granular data is currently available), based upon  
26 data available through the California Courts website. *See*, H. Scott Leviant, *Second*  
27 *Interim Report on class actions in California sheds new light on certification*  
28 (February 19, 2010), [www.thecomplexlitigator.com](http://www.thecomplexlitigator.com), available at

1 <http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on->  
2 [class-actions-in-california-sheds-n.html](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html); *see also, Findings of the Study of*  
3 *California Class Action Litigation, 2000-2006*, available at  
4 <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf>  
5 (finding that only 21.4% of all class actions were certified either as part of a  
6 settlement *or* as part of a contested certification motion). In other words, well  
7 under 20% of all class actions are certified by way of contested motion in  
8 California Superior Courts.

9         22. My ongoing investigation of this matter also led me to conclude that  
10 certain claims asserted in this matter were based upon a misunderstanding of the  
11 complex documents embodying the union agreements with Defendant. For  
12 example, my review of the relevant union agreements led me to conclude that  
13 Defendant was paying the correct union wage scale to Laborers, despite their  
14 reasonable but mistaken belief that contracts required the payment of higher hourly  
15 wages.

16         23. In addition to the discussion above, the statute of limitation applicable  
17 to Labor Code § 203 claims was recently reduced from a possible 4-year period to  
18 3 years when the Supreme Court decided *Pineda v. Bank of America*.

19         24. Based on our own independent investigation and evaluation, we are of  
20 the opinion that the Settlement documented by this Stipulation is fair, reasonable,  
21 and adequate, and in the best interest of the Settlement Class in light of all known  
22 facts and circumstances, including the risk of significant delay, the risk the  
23 Settlement Class will not be certified by the court or that it will later be decertified,  
24 the defenses asserted by Defendant to the merits and the class action status of this  
25 action, the numerous potential appellate issues, and the risk posed by current  
26 economic conditions. Based upon our investigations, we determined that the scope  
27 of the class originally proposed was overly broad and required revision to conform  
28 with discovered facts. The revised class, which focuses on operations at a specific

1 facility impacts a class of approximately 745 individuals.

2 25. On August 9, 2010, counsel for the Parties voluntarily attended  
3 mediation before Hon. Edward Infante (Ret.), an independent neutral with  
4 extensive experience mediating employment and wage and hour class action cases.  
5 Through the assistance of Hon. Edward Infante, the Parties were able to reach a  
6 Settlement.

7 26. On October 11, 2010, Plaintiffs and Defendant VALLEYCREST  
8 finally agreed upon all terms of a settlement, which were memorialized in the  
9 Stipulation of Class Action Settlement.

10 27. To the best of my knowledge, other than this Action, there are no other  
11 like claims asserted or filed by Class Members. To the best knowledge of my  
12 knowledge, no Class Member has refrained from bringing an action with claims  
13 similar to those raised in the Action, whether in reliance on the Action or  
14 otherwise, and who thus might be prejudiced by dismissal of the Action.

15  
16 BY GRANTING PRELIMINARY APPROVAL, THE COURT HAS  
17 PRELIMINARILY DETERMINED THE REASONABLENESS OF THE  
18 REQUESTED INCENTIVE AWARD

19 28. Plaintiffs Jesus Herrera, Jose Manuel Cervantes and Sabino Nungaray  
20 have been very helpful throughout the litigation. Plaintiffs participated in the  
21 drafting of written responses to discovery requests propounded by Defendant.  
22 They brought forward other former employees for us to interview. That valuable  
23 first-hand witness information was helpful in making the settlement possible  
24 because it provided independent confirmation that the proposed settlement was  
25 reasonable. Plaintiffs participated in the mediation.

26 29. In Class Counsel's opinion, the requested enhancement awards for  
27 Plaintiffs of \$2,000 to each are both fair and reasonable. Notably, these awards are  
28 well below the benchmark enhancement awards routinely granted in California

1 federal courts. *Faigman v. AT & T Mobility LLC*, C-06-04622-MHP, 2011 WL  
2 672648, at \*5 (N.D. Cal. Feb. 16, 2011) (“In this district, incentive payments of  
3 \$5,000 are presumptively reasonable.”), citing *Hopkins v. Hanesbrands, Inc.*, No  
4 08-0844, 2009 WL 928133, at \*10 (N.D.Cal. Apr.3 2009) (LaPorte M.J.).

5 30. There are no conflicts of interest between Plaintiffs and Class  
6 Members. Given the similarity of the claims asserted and remedies sought by Class  
7 Members, it is hard to imagine how there could be any. Defendant did not assert  
8 unique defenses against Plaintiff that it could not assert against any other Class  
9 Member. Also, there are no conflicts with Plaintiff’s counsel.

#### 10 THE EXPERIENCE OF CLASS COUNSEL

11 31. Spiro Moss LLP has been engaged in the practice of employment and  
12 labor law since its formation. The firm and its lawyers have handled more than 200  
13 overtime and other wage-related class actions in the past ten years. The firm has  
14 settled over 100 cases during that time. In the summer of 2004, Spiro Moss  
15 handled a wage and hour class action trial, a rarity in this practice area. Spiro Moss  
16 is routinely appointed lead or co-lead class counsel (or counsel for representative  
17 plaintiffs in FLSA representative actions) in federal and state courts in California  
18 and elsewhere, by way of motion for class certification or motion for settlement  
19 approval  
20 approval

21 32. Ira Spiro, the Spiro Moss partner overseeing this matter, has extensive  
22 experience in the field of wage & hour litigation. Mr. Spiro, and his partner,  
23 Dennis Moss, authored an amicus brief to the California Supreme Court for  
24 consideration in landmark case of *Sav-On Drug v. Superior Court*, 34 Cal. 4th 319  
25 (2004), which set the standard at that time for class certification in wage and hour  
26 disputes. Mr. Spiro was appointed by the Board of Governors of the State Bar of  
27 California, to serve a three year term, ending September 2001, on the State Bar’s  
28 ethics committee, the Standing Committee on Professional Responsibility and

1 Conduct (COPRAC). CORPRAC writes the official ethics opinions of the State  
2 Bar.

3 33. Mr. Moss has been an employment/labor lawyer since 1977 and has  
4 handled numerous cases in all aspects of employment and labor law, including but  
5 not limited to numerous federal and state wage and hour class action cases,  
6 National Labor Relations Board proceedings, wrongful discharge litigation,  
7 discrimination cases, administrative appeals involving wage and hour and other  
8 employment issues, numerous arbitrations, and various other matters involving  
9 both traditional labor-law (union/management law) and employment law issues in  
10 the non-union context. Mr. Moss successfully argued *Ramirez v. Yosemite Water*  
11 *Co.*, 20 Cal. 4th 785 (1999), a case in which defendants asserted sales exemptions  
12 in the California Supreme Court.

13 34. As the principal, day-to-day attorney assigned to this matter at Spiro  
14 Moss, I also bring substantial class action experience to this litigation:

- 15 (a) During 2010 alone, I have negotiated or helped negotiate class  
16 action settlements worth approximately \$8,500,000.
- 17 (b) I have been involved in the litigation of class actions since 1997,  
18 working as a law clerk on a number of class action matters.  
19 Since 1999, I have participated as an attorney in the litigation of  
20 well over 100 class actions, in California Superior Courts and in  
21 federal courts in California and Louisiana.
- 22 (c) Dating back to 1999, some of the earliest cases in which I  
23 contributed to my firm's efforts as co-lead/liaison counsel  
24 include:
- 25 i. *In re Paradise Memorial Park Litigation*, Los Angeles  
26 Superior Court Lead Case No. BC130375; and,  
27 ii. *In re Lincoln Memorial Park Litigation*, Los Angeles  
28 Superior Court Lead Case No. BC133643.

1 (d) I have prosecuted appeals in approximately 20 class action  
2 matters, arguing before the United States Court of Appeals for  
3 the Ninth Circuit Court and several of California's Courts of  
4 Appeal. I have taken several appeals through to Petitions for  
5 Writs of Certiorari to the United States Supreme Court. In  
6 connection with the appeals I have handled, I have participated  
7 in appeals resulting in published appellate decisions concerning  
8 or relating to class actions. Among others, those include:

- 9 i. *Ghazaryan v. Diva Limousine, LTD.*, 169 Cal.App.4th  
10 1524 (2009), Pet. for rev. denied;
- 11 ii. *Laliberte v. Pacific Mercantile Bank*, 147 Cal.App.4th  
12 1 (2007), rev. denied, Pet. for Cert. denied;
- 13 iii. *Alvarez v. May Dept. Stores Co.*, 143 Cal.App.4th  
14 1223 (2006), rev. denied, Pet. for Cert. denied;
- 15 iv. *Johnson v. Glaxosmithkline, Inc.*, 166 Cal.App.4th  
16 1497 (2008), rev. denied.
- 17 v. *Howard, et al. v. America Online, Inc.*, 208 F.3d 741  
18 (9th Cir. 2000), Pet. for Cert. denied.

19 (e) In addition to my work on complex litigation matters and class  
20 actions, I have authored published articles and columns on  
21 issues related to class actions, including:

- 22 i. H. Scott Leviant, *Unintended Consequences*, 6 U.C.  
23 Davis Bus. L.J. 18 (2006), at  
24 <http://blj.ucdavis.edu/article.asp?id=636> (May 1,  
25 2006);
- 26 ii. H. Scott Leviant, *Arbitration: A Look Back, a Look*  
27 *Ahead*, DAILY JOURNAL (Los Angeles), December 28,  
28 2010;

- 1                   iii. H. Scott Leviant, *Witnesses Cannot Hide*, Daily  
2                   Journal (Los Angeles), April 21, 2010;
- 3                   iv. H. Scott Leviant, *Divide and Conquer: The New*  
4                   *Paradigm of Class Action Defense?*, FORUM,  
5                   January/February 2009
- 6                   v. H. Scott Leviant, *Class Action Appellate Report*,  
7                   FORUM, 2009-2010 (Ongoing series);
- 8                   vi. H. Scott Leviant & Linh Hua, *Legislature Using Purse*  
9                   *Strings to Bind Judiciary*, Daily Journal (San  
10                   Francisco), March 15, 2010;
- 11                   vii. H. Scott Leviant, *Wrongfully Recused?*, DAILY  
12                   JOURNAL (Los Angeles), December 2, 2009;
- 13                   viii. H. Scott Leviant, *Cutting Class*, DAILY JOURNAL (Los  
14                   Angeles), April 15, 2008;
- 15                   ix. H. Scott Leviant, *Leveling The Playing Field*, DAILY  
16                   JOURNAL (Los Angeles), May 4, 2007;
- 17                   x. H. Scott Leviant, *A Bad Meal Deal: 'Brinker' Gets the*  
18                   *Incentive Question Wrong*, DAILY JOURNAL (Los  
19                   Angeles), August 6, 2008;
- 20                   xi. H. Scott Leviant & Jason E. Barsanti, *Maximize*  
21                   *Recovery in Unpaid Wage Cases*, FORUM,  
22                   January/February 2008;
- 23                   xii. H. Scott Leviant, et al., *Electronic Evidence: No*  
24                   *Longer an Optional Element in a Comprehensive*  
25                   *Litigation Plan*, ADVOCATE, April 2006;
- 26                   xiii. H. Scott Leviant, *Improving Rule 12(b)(6) survival*  
27                   *odds: Some considerations for effective RICO*  
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*pleading*, CIVIL RICO REPORT, Volume 15, Number 22, April 26, 2000 (LRP Publications).

(f) In addition to publications in industry newspapers, periodicals and journals, I am the Supervising Editor, primary author and founder of the legal blog The Complex Litigator (<http://www.thecomplexlitigator.com>). The Complex Litigator reports and comments on news and topics relevant to class action and complex litigation practice. My blog has been cited to the California Supreme Court in at least one Petition for Review.

(g) In the December 8, 2008 article “Billable Hours Aren’t the Only Game in Town Anymore,” *NATIONAL LAW JOURNAL*, the following hourly billing rates were reported by Sheppard Mullin Richter & Hampton, a leading firm in the defense of wage-and-hour class actions that I have frequently opposed when litigation wage-and-hour class actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year - \$310, 3rd Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435, 8th Year - \$455.

(h) In 2009 I was retained as appellate counsel in the appeal of a denial of class certification. For the specialized work on that appeal, I charged an hourly rate of \$650.00 per hour, a rate the hiring co-counsel accepted.

(i) Based upon my experience, my regular hourly billing rate is now \$550.00.

(j) I am currently serving in my third consecutive year as an elected member of the Board of Governors of the Consumer Attorneys of California. In that capacity, I have worked to preserve the

1 right of California's consumers and employees to bring  
2 proposed class actions. For example, I provided assistance to  
3 CAOC in its successful effort to defeat AB 298, which would  
4 have substantially impaired the ability of plaintiffs to prosecute  
5 class actions in California. More recently, on behalf of CAOC I  
6 co-authored several requests for publication of unpublished class  
7 action decisions, including one such request in *Jaimez v. Daiohs*  
8 *USA, Inc.*, 181 Cal. App. 4th 1286 (2010), and authored amicus  
9 briefs for CAOC in the Eighth Circuit matter entitled *Avritt v.*  
10 *Reliastar Life. Ins. Co.*, Case No. 09-2843, and the California  
11 Supreme Court matter entitled *Californians for Disability Rights*  
12 *v. Mervyn's, LLC*, 39 Cal. 4th 223 (2006).

13  
14 BY GRANTING PRELIMINARY APPROVAL, THE COURT HAS  
15 PRELIMINARILY DETERMINED THE REASONABLENESS OF THE  
16 REQUESTED FEE AND COST AWARD

17 35. When this case was taken on a contingent fee basis, with the firm  
18 agreeing to assume responsibility for all litigation costs, the ultimate result was far  
19 from certain. In the course of this litigation, Spiro Moss LLP paid motion filing  
20 fees, copy charges, Westlaw fees, and mailing, telephone and federal express  
21 charges. There was never a guarantee that Spiro Moss LLP would recoup those  
22 expenditures. Spiro Moss was precluded from other employment. Over the course  
23 of the case, no fewer than three attorneys at Spiro Moss litigated this matter (Ira  
24 Spiro, H. Scott Leviant and Linh Hua) and four total attorneys worked on this  
25 matter, including Sahag Majarian.

26 36. Class Counsel's experience in wage and hour class actions was integral  
27 in evaluating the strengths and weaknesses of the case against Defendants and the  
28 reasonableness of the settlement. Practice in the narrow field of wage and hour

1 litigation requires skill and knowledge concerning the rapidly evolving substantive  
2 law (state and federal), as well as the procedural law of class action litigation.

3 37. In the past 5 years, Spiro Moss LLP has settled many dozens of wage  
4 & hour class actions. Just as the Court in *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th  
5 43, 66, n.11 (2008) observed, it has been the experience at Spiro Moss LLP that  
6 attorney fee awards of one-third of a common settlement fund are the rule, rather  
7 than the exception. Here, Plaintiffs' counsel will not seek more than 25% of the  
8 settlement fund to compensate them for both fees *and* costs. (Stipulation, ¶ 52(a).)

9 38. I was the attorney at Spiro Moss primarily responsible for the day-to-  
10 day litigation of this action. This case required substantial firm resources,  
11 including: pre-litigation investigation and research; interviewing Class Members;  
12 reading and analyzing documentary evidence (including company records and  
13 caselaw); engaging in formal and informal discovery; researching the causes of  
14 action, particularly those in flux during this litigation; performing legal and factual  
15 analyses in preparation for mediation; and drafting the settlement materials and  
16 Class Notice. My contemporaneously maintained billing records indicate that I  
17 spent at least 131.3 hours on this matter, and I believe that I did not record all time  
18 spent litigating this matter. As a result, at least \$72,215 worth of my effort in this  
19 matter remains uncompensated, on a strict lodestar basis, and excluding all hours  
20 worked by other attorneys at Spiro Moss LLP, including Ira Spiro and Linh Hua.  
21 Ms. Hua contributed no less than 25 hours of her time to this matter, at a billing  
22 rate of \$400 per hour, and Mr. Majarian contributed no less than 25 hours of his  
23 time to this matter, at a billing rate of \$600 per hour. When the dollar value of  
24 contributions by other attorneys at Spiro Moss LLP is added, the requested fee is  
25 far below that combined lodestar figure. Monitoring of the settlement and  
26 responding to class member inquiries will require additional time contributions by  
27 Class Counsel. I estimate that I will spend no less than 10 more hours on issues  
28 related to finalizing the proposed settlement.

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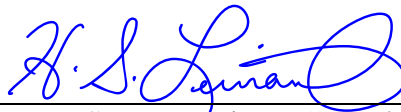
39. The counsel for Plaintiffs in this action have entered into a written fee sharing agreement. Counsel for Plaintiffs will disburse the aggregate attorneys' fees awarded by the Court pursuant to that agreement.

EXHIBITS

40. A true and correct copy of the Settlement Agreement, without attached Exhibits, is attached hereto as Exhibit "1."

I declare under penalty of perjury, under the laws of the United States and the State of California, that the foregoing is true and correct.

Executed this 20th day of May 2011, at Los Angeles, California.

  
\_\_\_\_\_  
H. Scott Leviant, "Declarant"

# **EXHIBIT 1**

1 J. KEVIN LILLY, Bar No. 119981  
SCOTT M. LIDMAN, Bar No. 199433  
2 LITTLER MENDELSON  
A Professional Corporation  
3 2049 Century Park East, 5th Floor  
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4 Telephone: 310.553.0308  
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5 Attorneys for Defendant  
6 VALLEYCREST LANDSCAPE  
DEVELOPMENT, INC.

7 IRA SPIRO, Bar No. 67641  
8 ira@spiomoss.com  
H. SCOTT LEVIANT, Bar No. 200834  
9 scott@spiomoss.com  
SPIRO MOSS LLP  
10 11377 W. Olympic Blvd., 5th Floor  
Los Angeles, CA 90064.1683  
11 Telephone: 310.235.2468  
Fax No.: 310.235.2456

12 Attorneys for Plaintiffs

13 ADDITIONAL COUNSEL OF RECORD  
14 ON FOLLOWING PAGE

15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA

17 SALOMON CASIQUE, et al.,  
18 Plaintiffs,  
19 vs.  
20 VALLEYCREST LANDSCAPE  
DEVELOPMENT, INC., a  
21 California corporation; and DOES 1  
through 10, inclusive,  
22 Defendants.  
23

Case No. CV09-9114 GHK (SSx)

HON. GEORGE H. KING

**STIPULATION RE CLASS ACTION  
SETTLEMENT AND RELEASE OF  
CLAIMS**

Trial Date: None Set

1 SAHAG MAJARIAN, II, Bar No. 146621  
sahagii@aol.com  
2 LAW OFFICES OF SAHAG MAJARIAN, II  
18250 Ventura Blvd.  
3 Tarzana, CA 91356  
Telephone: 818.609.0807  
4 Fax No.: 818.609.0892

5 Attorneys For Plaintiffs  
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1 This Stipulation re Class Action Settlement and Release of Claims is entered  
2 into by and between Plaintiffs Jesus Herrera, Jose Manuel Cervantes and Sabino  
3 Nungaray, on behalf of themselves and each and every other Class Member (as that  
4 term is defined below), and Defendant ValleyCrest Landscape Development, Inc.

5 **DEFINITIONS**

6 1. **“Action”** means the civil action originally commenced on October 14,  
7 2009 against Defendant in the Superior Court for the County of Los Angeles and  
8 removed to the United States District Court for the Central District of California on  
9 December 11, 2009, entitled *SALOMON CASIQUE, individually and on behalf of all*  
10 *others similarly situated; JESUS HERRERA, individually and on behalf of all others*  
11 *similarly situated; SABINO NUNGARAY, individually and on behalf of all others*  
12 *similarly situated; JOSE MANUEL CERVANTES, individually and on behalf of all*  
13 *others similarly situated v. VALLEYCREST LANDSCAPE DEVELOPMENT, INC., a*  
14 *California corporation; and DOES 1 through 10, inclusive, Case No. CV09-9114*  
15 *GHK (SSX).*

16 2. **“Stipulation”** means this Stipulation re Class Action Settlement and  
17 Release of Claims.

18 3. **“Settlement Class”** means “All employees of Defendant ValleyCrest  
19 Landscape Development who were employed out of Defendant’s Lopez Canyon  
20 facility in California at any time from October 14, 2005 through the date of preliminary  
21 approval of this Stipulation by the United States District Court for the Central District  
22 of California, and who worked as a Mechanic, or as a Leadman or Laborer subject to  
23 the Private Recovery Work Agreement Between The Southern California District  
24 Council of Laborers and its Affiliated Local Unions and ValleyCrest Landscape  
25 Development.”

26 4. **“Class Counsel”** means, collectively, Spiro Moss LLP and Law Offices  
27 of Sahag Majarian, II.

28

1           5.        “Class Counsel’s Fees and Expenses” means the amount awarded to  
2 Class Counsel by the United States District Court to compensate them for their fees  
3 and expenses in prosecuting the Action, not to exceed twenty five percent (25%) of the  
4 Gross Settlement Fund.

5           6.        “Class Members” means all members of the Settlement Class.

6           7.        “Class Notice” means the Notice of Proposed Class Action Settlement  
7 and Final Hearing attached as Exhibit A hereto, or a substantially similar notice.

8           8.        “Class Period” means the period beginning on October 14, 2005 and  
9 ending on the date of preliminary approval of this Stipulation by the United States  
10 District Court for the Central District of California.

11          9.        “Class Representatives” means, collectively, plaintiffs Jesus Herrera,  
12 Sabino Nungaray and Jose Manuel Cervantes.

13          10.       “Class Representative Payments” means the enhancement award  
14 payments to be made to Jesus Herrera, Sabino Nungaray and Jose Manuel Cervantes in  
15 their capacity as Class Representatives and as consideration for their execution of a  
16 general release of all known and unknown claims.

17          11.       “Court” means the United States District Court for the Central District of  
18 California.

19          12.       “Defendant” means ValleyCrest Landscape Development, Inc. (defined  
20 for purposes of this Stipulation to include its agents, parent companies, subsidiaries,  
21 divisions, predecessors, successors, assigns, affiliates, joint venturers, employees,  
22 attorneys and representatives).

23          13.       “Defendant’s Counsel” means Littler Mendelson, PC.

24          14.       “Effective Date” of this Stipulation means the first business day upon  
25 which the later of the following have occurred:

26            i.       The Parties and their respective attorneys have executed this  
27 Stipulation and the Court approves it;

1           ii.     Entry by the court of a Preliminary Approval Order approving the  
2 Stipulation;

3           iii.    Entry by the court of an Order Granting Final Approval of Class  
4 Action Settlement (“Final Order”) if no objections by Class Members have been filed,  
5 or if filed, have been withdrawn;

6           iv.     If any objections have been filed and not withdrawn either (1) the  
7 time to appeal the Court’s entry of Final Judgment has expired with no appeal having  
8 been taken; or (2) the Court’s entry of Final Judgment has been affirmed in its entirety  
9 by the court of last resort to which any appeal has been taken or petition for review has  
10 been presented and such affirmance has become no longer subject to further appeal or  
11 review; and

12          v.     The occurrence of the “Effective Date of Judgment” which shall  
13 be deemed to be the last of the following to occur:

14           1.     The first business day after the date and time to appeal or to  
15 seek permission to appeal or to seek other judicial review of the entry of the final  
16 judgment approving the settlement has expired with no appeal or other judicial review  
17 having been filed, taken or sought; or

18           2.     If an appeal or other judicial review has been filed, taken or  
19 sought, ten (10) court days after the date on which the final judgment is finally  
20 affirmed by an appellate court (without any alteration in the settlement payment or any  
21 material alteration of any other terms of this Stipulation, including without limitation  
22 the nature and scope of the release) with no possibility of subsequent appeal or other  
23 judicial review therefrom, or ten (10) court days after the date of appeal(s) or other  
24 judicial review therefrom are finally dismissed with no possibility of a subsequent  
25 appeal or other judicial review.

26          15.    “Eligible Shift” means any shift of any length during which a Class  
27 Member worked out of Defendant’s Lopez Canyon facility during the Class Period.

28

1           16.     “Final Approval Hearing Date” means the date set by the Court for the  
2 hearing on final approval of the class action settlement embodied in this Stipulation.

3           17.     “Final Order” means the Court’s order granting final approval of the  
4 Parties’ settlement.

5           18.     “Named Plaintiffs” means, collectively, plaintiffs Jesus Herrera, Sabino  
6 Nungaray and Jose Manuel Cervantes.

7           19.     “Opt-Out Class Member” means a Class Member who submits a valid  
8 and timely Opt-Out Request electing not to participate in the Stipulation pursuant to  
9 Paragraph 56 of this Stipulation.

10          20.     “Notice Plan” means the plan for the provision of notice to all Class  
11 Members under this Stipulation.

12          21.     “Parties” shall mean the Named Plaintiffs, individually and on behalf of  
13 all Class Members, and Defendant.

14          22.     “Plaintiff Class” means a class of all Plaintiff Class Members.

15          23.     “Plaintiff Class Member” means each Class Member who has not timely  
16 and properly submitted an Opt-Out Request pursuant to Paragraph 56 of this  
17 Stipulation.

18          24.     “Preliminary Approval Order” means an order from the Court  
19 preliminarily approving this Stipulation.

20          25.     “Released Parties” shall mean ValleyCrest Landscape Development,  
21 Inc., and its past or present subsidiaries, parent companies, affiliates, divisions,  
22 corporations in common control, successors or assigns and all past or present officers,  
23 directors, shareholders, partners, agents, insurers, employees, attorneys, advisors,  
24 accountants, representatives, trustees, heirs, executors, administrators, predecessors,  
25 successors or assigns of any of the foregoing entities referred to in this Paragraph.

26          26.     “Settled Claims”

27               a.     Settled Claims means all claims released in Paragraphs 50 and 51  
28 of this Stipulation.



1 overtime pursuant to applicable collective bargaining agreements, (3) failed to provide  
2 meal periods in alleged violation of Labor Code sections 226.7 and 512, (4) failed to  
3 provide rest breaks in alleged violation of Labor Code sections 226.7 and 512; (5)  
4 failed to reimburse business expenses in violation of Labor Code §2802; (6) failed to  
5 provide accurate itemized wage statements in alleged violation of Labor Code section  
6 226; (7) failed to pay all wages due and owing at the time of termination in alleged  
7 violation of Labor Code §203; (8) failed to pay vested vacation wages; and (9) violated  
8 the Unfair Competition Law (“UCL”) set forth at California Business and Professions  
9 Code section 17200 *et seq.*

10 35. Defendant removed the Action to the United States District Court for the  
11 Central District of California on December 11, 2009 pursuant to 28 U.S.C. §1331  
12 based upon the existence of federal questions (complete preemption pursuant to the  
13 Employment Retirement Security Act and the Labor Management Relations Act).

14 36. On May 5, 2010, the Court approved a Stipulation between the Parties  
15 dismissing Salomon Casique from the action, and dismissing without prejudice all  
16 allegations asserted on behalf of individuals holding a Superintendent job title.

17 37. Defendant denies that it engaged in any violations of the law in  
18 connection with its wage-and-hour practices, and further denies that it has any liability  
19 or engaged in wrongdoing of any kind associated with the claims alleged in the Action  
20 by the Named Plaintiffs or any Class Member. Defendant contends that it at all times  
21 complied with all California wage-and-hour laws in connection with the employment  
22 of Named Plaintiffs and the Class Members.

23 38. Class Counsel has engaged in a long and detailed prosecution of this  
24 Action.

25 39. On August 9, 2010, counsel for the Parties voluntarily attended  
26 mediation before Hon. Edward Infante (Ret.), an independent neutral with extensive  
27 experience mediating employment and wage and hour class action cases. Through the  
28

1 assistance of Hon. Edward Infante, the Parties were able to reach this Settlement which  
2 forms the basis for this Stipulation.

3 40. Both prior to and during the mediation on August 9, 2010, the Parties  
4 engaged in extensive formal and informal discovery in the Action. The discovery  
5 combined with the discussions yielded valuable information to the Parties in terms of  
6 class certification issues, ultimate liability and the amount of damages in controversy.

7 41. The Parties conducted extensive internal and formal investigations  
8 regarding the instant matter. The Parties also interviewed Class Members. The Parties  
9 also conducted extensive investigations for the preparation of its objections and  
10 responses to formal discovery and prosecution and defense of the case, which included  
11 reviewing documents relating to Defendant's compensation policies and procedures,  
12 employee handbooks, job descriptions and other corporate policies and procedures  
13 relevant to the issues herein. Finally, Defendant has produced, and Class Counsel has  
14 analyzed, shift data and timesheets of the Class Members ("Mediation Data").  
15 Defendant represented at the time it was produced and continues to represent that the  
16 Mediation Data was not known by Defendant to be erroneous, and Defendant believes  
17 that it is reliable information extracted from the books and records of Defendant.

18 42. Accordingly, the Parties are sufficiently familiar with the facts of this  
19 case to warrant settlement now and have agreed to this arms-length Settlement  
20 pursuant to the terms set forth herein.

21 43. The Parties recognize that the issues presented in the Action are likely  
22 only to be resolved with extensive and costly pretrial proceedings and that further  
23 litigation will cause inconvenience, distraction, disruption, delay and expense  
24 disproportionate to the potential benefits of litigation and have taken into account the  
25 risk and uncertainty of the outcome inherent in any litigation.

26 44. Based on their own independent investigation and evaluation, Class  
27 Counsel is of the opinion that the Settlement documented by this Stipulation is fair,  
28 reasonable, and adequate, and in the best interest of the Settlement Class in light of all

1 known facts and circumstances, including the risk of significant delay, the risk the  
2 Settlement Class will not be certified by the court or that it will later be decertified, the  
3 defenses asserted by Defendant to the merits and the class action status of this action,  
4 the numerous potential appellate issues, and the risk posed by current economic  
5 conditions. Based upon their investigations, Class Counsel determined that the scope  
6 of the class originally proposed was overly broad and required revision to conform  
7 with discovered facts. While Defendant specifically denies any liability in the Action,  
8 Defendant has agreed to enter into this settlement to avoid the uncertainty, cost and  
9 business disruption associated with defending the Action.

10 45. To the best knowledge of the Parties and their respective counsel, other  
11 than this Action, there are no other like claims asserted or filed by Class Members. To  
12 the best knowledge of the Parties and their respective counsel, no Class Member has  
13 refrained from bringing an action with claims similar to those raised in the Action,  
14 whether in reliance on the Action or otherwise, and who thus might be prejudiced by  
15 dismissal of the Action.

16 46. This Stipulation is contingent upon the approval by the Court of the  
17 Stipulation for settlement purposes only. Defendant does not waive, and instead  
18 expressly reserves, its rights to challenge the propriety of class certification for any  
19 purpose should the Court not approve this Stipulation, including all rights of writ or  
20 appeal.

21 **TERMS AND CONDITIONS**

22 NOW THEREFORE, in consideration of the recitals listed above and the  
23 promises and warranties set forth below, and intending to be legally bound and  
24 acknowledging the sufficiency of the consideration and undertakings set forth below,  
25 the Named Plaintiffs, individually and on behalf of the Class Members, and Defendant  
26 agree that the Action shall be, and is finally and fully compromised and settled on the  
27 following terms and conditions:  
28

1           47.     Non-Admission Of Liability. The Parties enter into this Stipulation to  
2 resolve the dispute that has arisen between them and to avoid the burden, expense and  
3 risk of continued litigation. In entering into this Stipulation, Defendant does not admit,  
4 and specifically denies, that it has violated any state or local law; violated any  
5 regulations or guidelines promulgated pursuant to any statute or any other applicable  
6 laws, regulations or legal requirements; breached any contract, violated or breached  
7 any duty; engaged in any misrepresentation or deception; or engaged in any other  
8 unlawful conduct with respect to the Named Plaintiffs or any member of the Class.  
9 Defendant further does not admit that, in the absence of this Settlement, this Action or  
10 the claims asserted therein, is or are appropriate for class certification. Neither this  
11 Stipulation, nor any of its terms or provisions, nor any of the negotiations connected  
12 with it, shall be construed as an admission or concession by Defendant of any such  
13 violations or failures to comply with any applicable law. Except as necessary in a  
14 proceeding to enforce the terms of this Stipulation, this Stipulation and its terms and  
15 provisions shall not be offered or received as evidence in any action or proceeding to  
16 establish any liability or admission on the part of Defendant or to establish the  
17 existence of any condition constituting a violation of, or a non-compliance with state,  
18 local or other applicable law.

19           48.     Conditions of Stipulation.

20           a.     The Parties intend their settlement to be contingent upon the  
21 preliminary and final approval by the Court of each and every term of this Stipulation,  
22 without material modification, including without limitation, the Court approving the  
23 filing of the Proposed First Amended Complaint as set forth in Paragraph 49 below. If  
24 the Court does not approve this Stipulation, the Parties intend this Stipulation to  
25 become null and void, and unenforceable, in which event the Settlement set forth  
26 herein, including any modifications made with the consent of the Parties, and any  
27 action taken or to be taken in connection with this Stipulation, shall be terminated and  
28 shall become null and void and have no further force or effect.

1           b.       In the event that the Court does not grant preliminary or final  
2 approval of the Settlement, or in the event that this Stipulation shall terminate or the  
3 Settlement does not become effective for any reason, the Stipulation and all  
4 negotiations, court orders and proceedings relating thereto shall be without prejudice to  
5 the rights of the Named Plaintiffs, Class Members and Defendant, each of whom shall  
6 be restored to their respective positions existing prior to the execution of this  
7 Stipulation, and evidence relating to the Stipulation and all negotiations shall not be  
8 discoverable or admissible in the Action or any other litigation.

9           c.       If the Court issues the Preliminary Approval Order but does not  
10 issue the Final Approval Order, then the Preliminary Approval Order shall be vacated  
11 in its entirety unless the Parties agree upon other or additional terms necessary to  
12 obtain the final approval of this Stipulation. In addition, neither this Stipulation, the  
13 Preliminary Approval Order, nor any other document in any way relating to any of the  
14 foregoing, shall be relied upon, referred to or used in any way for any purpose in  
15 connection with any further proceedings in this Action or any other action.

16           49.     Amendment to Complaint. As part of this Stipulation, the Parties agree  
17 to enter into a Joint Stipulation and [Proposed] Order re Filing of a First Amended  
18 Class Action Complaint (a true and correct copy of which is attached hereto as Exhibit  
19 C), which will amend the Action so as to: (i) limit the class at issue to those individuals  
20 who are members of the Settlement Class as that term is defined in Paragraph 3 above;  
21 and (ii) add claims under the Labor Code Private Attorney General Act, Labor Code  
22 §2698 et seq. (“PAGA”) on behalf of the Named Plaintiffs and Settlement Class for  
23 penalties related to all other claims alleged in the Action. A true and correct copy of  
24 the Proposed First Amended Complaint is attached hereto as Exhibit D. The Parties  
25 understand, acknowledge and agree that the Stipulation reached herein is expressly  
26 conditioned upon the Court’s entering of an Order allowing for the filing of the  
27 Proposed First Amended Complaint in substantially the same form as set forth in  
28 Exhibit D.

1           50.     Release Of All Settled Claims.

2           a.     As of the date of entry of the Final Approval Order pursuant to this  
3 Stipulation, the Named Plaintiffs and all Plaintiff Class Members (*i.e.*, Class Members  
4 who do not properly and timely submit an Opt-Out Request pursuant to Paragraph 56  
5 below) hereby do and shall be deemed to have fully, finally, and forever released,  
6 settled, compromised, relinquished and discharged any and all of the Released Parties  
7 of and from any and all claims, causes of action, damages, wages, benefits, expenses,  
8 penalties, debts, liabilities, demands, obligations, attorneys' fees, costs, and any other  
9 form of relief or remedy in law, equity, arising out of Plaintiff's and the Class  
10 Members' employment with Defendant which are being asserted in the Action.  
11 Among the claims and causes of action expressly excluded from any release in this  
12 Stipulation are claims and causes of action for unlawful employment discrimination  
13 of any type, wrongful employment termination, and workers' compensation.

14           b.     In giving this release, the Named Plaintiffs and the Plaintiff Class  
15 Members acknowledge that they are aware that facts may be discovered in addition to  
16 or different from those which they now know or believe to be true with respect to the  
17 subject matter of the release, but that it is their respective intention to, and they do  
18 hereby fully, finally, and forever settle and release any and all Released Parties from  
19 any and all Settled Claims without regard to the subsequent discovery or existence of  
20 such additional or different facts.

21           c.     As of the Final Hearing Date, the Named Plaintiffs and the  
22 Plaintiff Class Members, and all successors in interest, shall be permanently enjoined  
23 and forever barred from prosecuting any and all Settled Claims released pursuant to  
24 this Paragraph 50 against the Released Parties. Thus, subject to and in accordance with  
25 this Stipulation, even if the Named Plaintiffs and/or any Plaintiff Class Member may  
26 hereafter discover facts in addition to or different from those they now know or believe  
27 to be true with respect to the Settled Claims, they shall be deemed to have, and by  
28

1 operation of the final order and judgment shall have, fully, finally, and forever settled  
2 and released any and all Settled Claims.

3 d. The Parties agree for purposes of the Settlement only, because the  
4 Class Members are so numerous, it is impossible or impracticable to have each Class  
5 Member execute this Stipulation. Accordingly, the Class Notice will advise all Class  
6 Members of the binding nature of the release and such notice shall have the same force  
7 and effect as if the Stipulation were executed by each Class Member.

8 e. The Named Plaintiffs and Class Counsel represent, covenant, and  
9 warrant that they have not directly or indirectly assigned, transferred, encumbered or  
10 purported to assign, transfer, or encumber to any person or entity any portion of any  
11 liability, claim, demand, action, cause of action, or rights herein released and  
12 discharged, except as set forth herein.

13 51. Full Releases Between The Parties

14 a. Full Release By Named Plaintiffs. As of the date of entry of the  
15 Final Approval Order, the Named Plaintiffs on their own behalf and on behalf of their  
16 dependents, heirs, successors and assigns, irrevocably and unconditionally waive,  
17 release and forever discharge the Released Parties from all claims for relief, causes of  
18 action, and liabilities, known or unknown, that Named Plaintiffs have or may have  
19 against the Released Parties, individually and/or collectively, arising out of, relating to,  
20 or resulting from any events occurring prior to the date of entry of the Final Approval  
21 Order including, but not limited to, any claims for relief, causes of action, and  
22 liabilities, arising out of, relating to or resulting from Named Plaintiffs' employment  
23 with the Released Parties and/or the cessation of that employment. Without limiting  
24 the generality of the foregoing, Named Plaintiffs acknowledge and agree that among  
25 the claims being released are those arising under Title VII of the Civil Rights Act of  
26 1964, the Civil Rights Act of 1866, the Age Discrimination in Employment Act, the  
27 Americans with Disabilities Act, the California Fair Employment and Housing Act, the  
28 California Labor Code, any and all contract, statutory, tort and equitable claims, or any

1 other claim based upon any state or federal public policy, alleged wrongful conduct or  
2 injury arising out of or in any way connected with any acts or omissions occurring  
3 prior to the execution of this Agreement.

4 (1) Without limiting the generality of the foregoing, and in  
5 addition to the foregoing, the Named Plaintiffs specifically and expressly release all  
6 claims, to the maximum extent permitted by law, arising from (1) the Action and any  
7 claims arising out of or reasonably related to the facts alleged in the Action, including  
8 without limitation all claims under the California Labor Code, Industrial Welfare  
9 Commission Wage Orders and the California Business and Professions Code, claims  
10 for wages under any applicable collective bargaining agreements, claims for missed  
11 meal and rest periods, unpaid wages, unpaid overtime, claims for restitution and other  
12 equitable relief, liquidated damages, punitive damages, waiting time penalties,  
13 penalties of any nature whatsoever, attorneys' fees, other compensation or benefits and  
14 (2) any wage and hour violations, whether premised on statute, contract, tort or other  
15 theory of liability under state, federal or local law, arising out of or reasonably related  
16 to the facts, incidents, transactions, events, occurrences, disclosures, statements, acts,  
17 or omissions in law or in equity, asserted or that could have been reasonably asserted  
18 from the facts alleged in the Action by the Named Plaintiffs against Defendant and the  
19 other Released Parties up to the date of entry of the Final Approval Order.

20 (2). This release by the Named Plaintiffs includes a waiver of  
21 their individual rights under Civil Code section 1542, the text of which provides:

22 "A general release does not extend to claims which the creditor  
23 does not know or suspect to exist in his or her favor at the time of  
24 executing the release, which if known by him or her must have  
25 materially affected his or her settlement with the debtor."

26 b. Full General Releases By Defendant. As of the date of entry of the  
27 Final Approval Order, Defendant, and all Persons purporting to act on its behalf or  
28 purporting to assert a claim under or through it, including, but not limited to, any of its

1 past, present, and future parents, affiliates, subsidiaries, divisions, predecessors,  
2 successors, and assigns, and each of their officers, directors, board members, trustees,  
3 shareholders, employees, agents, attorneys, auditors, accountants, experts, contractors,  
4 stockholders, representatives, partners, insurers, reinsurers, and other persons acting  
5 on their behalf, whether individual, representative, legal, equitable, direct or indirect,  
6 or any other type or in any other capacity (collectively, the “ValleyCrest Releasing  
7 Parties”) hereby forever completely and irrevocably release and discharge Plaintiffs  
8 from all claims, known or unknown, that any of the ValleyCrest Releasing Parties  
9 have or may have had against Plaintiffs under any source of law. The ValleyCrest  
10 Releasing parties also hereby completely and irrevocably release and discharge Class  
11 Counsel from all claims, known or unknown, that any of the ValleyCrest Releasing  
12 Parties have or may have had against Class Counsel under any source of law that  
13 relate to the Action. Expressly excluded from this release pertaining to Class Counsel  
14 are any claims, known or unknown, that relate to any matters unrelated to the Action.

15       52.     Settlement Payments And Calculation Of Claims. Subject to the Court’s  
16 issuance of the Final Order and the conditions specified in this Stipulation, and in  
17 consideration of the mutual covenants and promises set forth herein, Defendant agrees  
18 to make a payment under this Stipulation in the maximum amount of two hundred fifty  
19 thousand dollars and zero cents (\$250,000.00) (“Gross Settlement Fund” or “GSF”).  
20 The GSF includes, but is not limited to, payments to be made for (1) Class Counsel’s  
21 Fees and Expenses; (2) Payment to the California Labor Workforce Development  
22 Agency (“LWDA”); (3) the Class Representative Payments; (4) costs of administering  
23 the Settlement; and (5) Settlement Payments to the Qualified Claimants. The Parties  
24 agree, subject to Court approval, that the GSF shall be apportioned as follows:

25             a.       Class Counsel will apply to the Court for an award of attorneys’  
26 fees and costs in an amount not to exceed twenty five percent (25%) of the GSF  
27 (“Class Counsel Fees and Costs”). Defendant will not oppose such application. These  
28 Class Counsel Fees and Costs are included in, and shall come from, the GSF. Class

1 Counsel will be issued an IRS Form 1099 for any Class Counsel Fees and Costs  
2 awarded by the Court pursuant to this Paragraph, and Class Counsel agrees to assume  
3 all responsibility and liability for the payment of taxes due on such payments. To the  
4 extent Class Counsel Fees and Costs are not approved in the full amount requested,  
5 then the amount not approved will revert back to the GSF to be distributed per the  
6 terms of this Stipulation pro-rata to Qualified Claimants. Except as provided in this  
7 Paragraph, each party shall bear his, her or its own attorneys' fees, costs, and expenses  
8 incurred in the prosecution, defense, or settlement of the Action.

9           b.       Class Counsel will apply to the Court for the Class Representative  
10 Payments of two thousand dollars and zero cents (\$2,000.00) to be paid to each of the  
11 Named Plaintiffs for their services, assuming the risks associated with this litigation,  
12 and as consideration for providing a general release. Defendant will not oppose such  
13 application. The Class Representative Payments are included in, and shall come from,  
14 the GSF. The Class Representative Payments approved by the Court pursuant to this  
15 Paragraph and made to the Named Plaintiffs shall not be treated as taxable wages, but  
16 rather as 1099 Miscellaneous income, and Named Plaintiffs agree to assume all  
17 responsibility and liability for the payment of taxes due on the payment. To the extent  
18 that the Class Representative Payments are not approved in the full amount requested,  
19 then the amount not approved will revert back to the GSF to be distributed per the  
20 terms of this Stipulation pro-rata to Qualified Claimants. The Class Representative  
21 Payments payable to the Named Plaintiffs shall be in addition to any payments they  
22 may receive as a Qualified Claimant, assuming they satisfy the requirements for same.

23           c.       Subject to Court approval, all amounts necessary to cover the  
24 Settlement Administrator's costs of administering the settlement shall be paid from the  
25 GSF. For purposes of estimate the Net Settlement Amount (as described in Paragraph  
26 52.e below), the Parties will estimate the Settlement Administrator's costs to be  
27 approximately twenty thousand dollars and zero cents (\$20,000.00). To the extent the  
28

1 Settlement Administrator's costs are less or more than this estimated amount, the NSA  
2 and resulting calculations will be appropriately adjusted.

3 d. An amount of five thousand dollars and zero cents (\$5,000.00)  
4 shall be paid to the LWDA as and for payment pursuant to PAGA. This PAGA  
5 payment shall be paid out of the GSF.

6 e. Those funds remaining in the GSF, after deducting the amounts  
7 specified in Paragraphs 52(a) – 52(d) above, will be considered the Net Settlement  
8 Amount ("NSA"). Defendant agrees to distribute, through the Settlement  
9 Administrator, on a Claims Made basis, a minimum of thirty percent (30%) of the NSA  
10 to Qualified Claimants, using the Claim Forms described in Paragraph 55 below.

11 f. A per shift recovery factor ("Shift Recovery Factor") will be  
12 determined as follows: divide an amount equal to the NSA by the total number of shifts  
13 worked during the Class Period by Laborers, Leadmen and Mechanics that are  
14 members of the Settlement Class, weighted by the average hourly rate of pay for each  
15 job classification. Represented as an equation, the Shift Recovery Factor is calculated  
16 as follows:

$$\text{Shift Recovery Factor} = \text{NSA} \div (\text{Shifts}_{\text{LAB.}} \times \text{Av. Hourly Rate}_{\text{LAB.}} + \text{Shifts}_{\text{LEAD.}} \times \\ \text{Av. Hourly Rate}_{\text{LEAD.}} + \text{Shifts}_{\text{MECH.}} \times \text{Av. Hourly Rate}_{\text{MECH.}})$$

17  
18  
19  
20  
21 A Settlement Payment for each Qualified Claimant shall be calculated by multiplying  
22 his or her job classification average hourly rate of pay by the number of shifts worked  
23 by the Qualified Claimant during the Class Period and multiplying the result by the  
24 Shift Recovery Factor as follows:

$$\text{Payment to Laborer} = \text{Shift Recovery Factor} \times \text{Shifts}_{\text{LAB.}} \times \text{Av. Hourly Rate}_{\text{LAB.}}$$

$$\text{Payment to Leadman} = \text{Shift Recovery Factor} \times \text{Shifts}_{\text{LEAD.}} \times \text{Av. Hourly Rate}_{\text{LEAD.}}$$

$$\text{Payment to Mechanic} = \text{Shift Recovery Factor} \times \text{Shifts}_{\text{MECH.}} \times \text{Av. Hourly Rate}_{\text{MECH.}}$$

1 g. Unless otherwise provided in this Stipulation, the remainder of the  
2 NSA after the payments in paragraphs 52(a)–52(f), if any, shall revert to Defendant.  
3 Defendant will not be required to fund amounts that are not claimed. The Parties agree  
4 that settlement checks shall be subject to a ninety (90) day void period, after which the  
5 checks shall no longer be negotiable. The dollar amount represented by any uncashed  
6 or unclaimed checks shall revert to Defendant.

7 53. No Credit Toward Benefit Plans. The Settlement Payments made to  
8 Qualified Claimants under this Stipulation shall not be utilized to calculate any  
9 additional benefits under any benefit plans to which any Qualified Claimant may be  
10 eligible including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans,  
11 stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other  
12 benefit plan. Rather, it is the Parties’ intention that this Stipulation will not affect any  
13 rights, contributions, or amounts to which any Plaintiff Class Member may be entitled  
14 under any benefit plans.

15 54. Taxation Of Settlement Proceeds.

16 a. All payments to Qualified Claimants shall be allocated to the  
17 payment of taxable wages and wage-related payments for which Form W-2s will be  
18 issued.

19 b. All Settlement Payments paid to Qualified Claimants, shall be paid  
20 in a net amount after deduction of applicable state and federal tax deductions and/or  
21 withholdings. Nothing in this Stipulation is intended to constitute legal advice. To the  
22 extent that this Stipulation or any of its attachments is interpreted to contain or  
23 constitute advice regarding any U.S. or Federal tax issue, such advice is not intended or  
24 written to be used, and cannot be used, by any person for the purpose of avoiding  
25 penalties under the Internal Revenue Code. Defendant is not responsible for any tax  
26 consequences regarding the allocation of the settlement payments.

1 c. All Parties represent that they have not received, and shall not rely  
2 on, advice or representations from other parties or their agents regarding the tax  
3 treatment of payments under federal, state, or local law.

4 d. Defendant agrees to pay its share of any payroll taxes that are  
5 required to be paid because of Settlement Payments to Qualified Claimants.

6 55. Notice Procedure. Within thirty (30) days after entry of the Preliminary  
7 Approval Order, Defendant shall provide to the Settlement Administrator a list of the  
8 Class Members that identifies for each Class Member his/her Social Security number,  
9 last-known address, the dates of his/her employment during the Class Period, and the  
10 number of Eligible Shifts for each Class Member during the Class Period.

11 a. Within twenty (20) days after receipt of the above information  
12 from Defendant, the Settlement Administrator shall send the Class Notice and Claim  
13 Form, both of which will be sent in both English and Spanish, to each Class Member.  
14 It shall be conclusively presumed that each and every Class Member whose Class  
15 Notice and forms are not returned to the Settlement Administrator as undeliverable  
16 within fifteen (15) calendar days after mailing actually received the Class Notice and  
17 appropriate forms.

18 b. The Settlement Administrator shall re-mail any Class Notice and  
19 appropriate forms returned by the Post Office with a forwarding address. It shall be  
20 conclusively presumed that those Class Members whose re-mailed Class Notice and  
21 forms are not returned to the Settlement Administrator as undeliverable within fifteen  
22 (15) calendar days after re-mailing, actually received the Class Notice and appropriate  
23 forms.

24 c. The Settlement Administrator will use the appropriate skip tracing  
25 and National Change of Address searches in an effort to ensure delivery of the Class  
26 Notice and appropriate form to each Class Member. It is the intent of the Parties that  
27 reasonable means be used to locate Class Members and apprise them of their rights.  
28

1           d.       Class Counsel shall provide to the Court, at or before the Final  
2 Hearing Date, a declaration from the Settlement Administrator confirming that the  
3 Class Notice and related forms were mailed to all Class Members as required by this  
4 Stipulation, as well as any additional information Class Counsel deems appropriate to  
5 provide to the Court.

6           e.       The Claim Form will include a procedure by which each Class  
7 Member must claim entitlement to a Settlement Payment by timely postmarked written  
8 Claim to the Settlement Administrator, within the period provided for on the Claim  
9 Form, which shall be sixty (60) days from the date that the Class Notice and Claim  
10 Forms are mailed to Class Members. Any challenges to the number of Eligible Shifts  
11 identified on the Claim Form will be resolved by Class Counsel and Defendant's  
12 Counsel to the extent possible. Any issues which cannot be resolved between Class  
13 Counsel and Defendant's Counsel will be resolved by the Court at the Final Approval  
14 Hearing. The personnel records, including payroll records, of Defendant shall be  
15 considered by counsel as the best evidence of the number of Eligible Shifts.

16           f.       Within seven (7) days after the close of the period for submitting a  
17 Claim Form, the Settlement Administrator will provide Class Counsel and Defendant's  
18 counsel with a report listing the amount of all Settlement Payments to be made to  
19 Qualified Claimants. After receiving the Settlement Administrator's report, Class  
20 Counsel and Defendant's counsel shall jointly review the same to determine if the  
21 calculation of payments to Qualified Claimants is consistent with this Stipulation.

22       56.    Opt-Out Procedure. Unless a Class Member opts out of the Settlement,  
23 he/she shall be bound by the terms and conditions of this Stipulation, and shall also be  
24 bound by the Court's Order enjoining all Class Members from pursuing, or seeking to  
25 reopen, any of the Settled Claims against the Released Parties, regardless of whether he  
26 or she timely submits a Claim Form. A Class Member will not be entitled to opt out of  
27 the Settlement unless he or she does all of the following: (i) properly completes an  
28

1 Opt-Out Request; (ii) signs the Opt-Out Request; and (iii) returns the Opt-Out Request  
2 so that it is postmarked on or before the expiration of the Opt-Out Period.

3 a. Subject to Court approval, Class Members shall have forty-five  
4 (45) days (referred to hereafter as the "Opt Out Period") from the date that the  
5 Settlement Administrator mails the Class Notice to them to postmark the Opt Out  
6 Request which must be signed under penalty of perjury, and returned by mail to the  
7 Settlement Administrator. The Settlement Administrator shall not review or consider  
8 any Opt-Out Request postmarked after the end of the Opt-Out Period. It shall be  
9 conclusively presumed that if an Opt-Out Request is not postmarked on or before the  
10 end of the Opt-Out Period, the Class Member did not make the request in a timely  
11 manner. Under no circumstances shall the Settlement Administrator have the authority  
12 to extend the deadline for Class Members to submit an Opt-Out Request, except upon a  
13 written agreement between Class Counsel and Defendant's Counsel or a showing of  
14 good cause as determined by the Court.

15 b. Upon receipt of a timely and properly executed Opt-Out Request  
16 within the Opt-Out Period, the Settlement Administrator shall review the request to  
17 verify the information contained therein, and to confirm that the request complies with  
18 the requirements of this Stipulation. The Settlement Administrator shall also review its  
19 records to determine whether the Class Member submitted a Claim Form. The  
20 Settlement Administrator will send to Class Counsel and Defendant's Counsel copies  
21 of all executed Opt-Out Requests it receives on an ongoing basis promptly upon its  
22 receipt. Class Counsel and Defendant's counsel will resolve all issues regarding the  
23 validity of Opt-Out Requests. If any such issues cannot be resolved, the Court can  
24 resolve such issues at the Final Approval Hearing. If a Class Member submits both a  
25 Claim Form and an Opt-Out Request, the Claim Form will take precedence and be  
26 considered valid, and the Opt-Out Request will be deemed to have been sent by  
27 mistake and rejected.

28

1 c. Within ten (10) business days after the close of the period for  
2 submitting an Opt-Out Request, the Settlement Administrator shall notify Class  
3 Counsel and Defendant's Counsel in writing of: (i) the number of timely completed and  
4 properly submitted Opt Out Requests, and (ii) the name(s) of the Class Member(s) who  
5 submitted the Opt Out Request(s).

6 d. Any Class Member who fails to submit a timely, complete and  
7 valid Opt-Out Request shall be barred from opting out of this Stipulation or the  
8 Settlement.

9 57. Objections To Settlement. Any Plaintiff Class Member may object to the  
10 Settlement as follows:

11 a. Class Members shall be given the opportunity to object to the  
12 terms of the Stipulation and to participate at the Final Approval Hearing, in  
13 accordance with the instructions set forth in the Notice. Any Class Member seeking  
14 to object to the terms of the Stipulation shall file such objection in writing with the  
15 Court and serve such objection on Class Counsel and Defendant's Counsel no later  
16 than thirty (30) days after the original date of mailing of the Notice by the Settlement  
17 Administrator. Any Class Member who fails to file and serve a timely written  
18 objection shall be foreclosed from objecting to the terms of the Stipulation unless  
19 otherwise ordered by the Court.

20 b. The Parties agree that if any Class Member objects to the  
21 Stipulation or disputes the basis for determining their share of the NSA, Defendant's  
22 records shall presumptively control unless the Class Member can produce  
23 documentation evidencing other periods of employment or shifts worked during the  
24 Class Period. The Parties further agree that any dispute that cannot be resolved by  
25 Class Counsel and Defendant's counsel may be brought before the Court before  
26 issuance of the Final Approval Order.

1           58.     Funding And Distribution Of Settlement.

2           a.     Within thirty (30) days after the Effective Date, Defendants shall  
3 cause to be submitted to the Settlement Administrator sufficient funds to pay (1) the  
4 Settlement Payments to be paid to Qualified Claimants; (2) the Court-approved amount  
5 of Class Counsel Fees and Costs; (3) the Court-approved Class Representative  
6 Payments; (4) the Court-approved payment to the LWDA; and (5) the Court-approved  
7 costs payable to the Settlement Administrator.

8           b.     The Settlement Administrator shall make its best efforts to mail  
9 Settlement Payments to Qualified Claimants who returned timely and duly completed  
10 Claim Forms, including those who submitted timely challenges with their Claim Forms  
11 that were resolved by the Settlement Administrator, within thirty (30) days following  
12 Defendant's funding pursuant to Paragraph 58.a above. The Settlement Administrator  
13 shall mail the Court-approved Class Representative Payments to Named Plaintiffs and  
14 send to Class Counsel the Class Counsel's Fees and Expenses awarded by the Court  
15 within thirty (30) days following Defendant's funding pursuant to Paragraph 58.a  
16 above.

17           c.     Within ninety (90) days after payment of all Settlement Payments,  
18 the Settlement Administrator will send to Defendant copies of all paystubs and Forms  
19 W-2 and/or 1099 sent to the Class Members.

20           59.     Binding Effect Of Stipulation On Class Members. Subject to Court  
21 approval, all Plaintiff Class Members shall be bound by this Stipulation, and the Action  
22 and the Settled Claims shall be dismissed with prejudice and released as against  
23 Defendant and the Released Parties. In addition, unless a Class Member opts out of the  
24 Settlement described in this Stipulation, he/she shall be bound by the Court's Order  
25 enjoining all Plaintiff Class Members from pursuing, or seeking to reopen, Settled  
26 Claims against Defendant and the Released Parties.

1           60.     Provisional Approval Of Settlement. Upon execution of this Stipulation,  
2 the Named Plaintiffs shall promptly prepare and file a motion in the Action requesting  
3 that the Court enter the Preliminary Approval Order:

4           a.     Preliminarily approving for settlement purposes only the proposed  
5 Settlement and this Stipulation;

6           b.     Appointing and approving a claims administrator mutually agreed  
7 to by the Parties as the Settlement Administrator, to administer the claims and  
8 settlement payment procedures required by this Stipulation;

9           c.     Approving the form of the Class Notice (including forms), and  
10 requiring that each be sent to Class Members;

11           d.     Approving the Notice Plan;

12           e.     Scheduling the Settlement Hearing for consideration of final  
13 approval of this Stipulation.

14           f.     Establishing a procedure for Class Members to opt out of the  
15 settlement and setting a date after which no Class Members shall be allowed to submit  
16 requests to opt out; and

17           g.     Establishing a procedure for Plaintiff Class Members to object to  
18 the settlement.

19           Defendant agrees to cooperate with Class Counsel in accomplishing  
20 preliminary approval, the claims process and final approval. The Parties agree to fully  
21 cooperate with each other to accomplish the terms of this Stipulation, including but not  
22 limited to, execution of such documents and to take such other action as may be  
23 reasonably necessary to implement the terms of this Stipulation. The Parties shall use  
24 their best efforts, including all efforts contemplated by this Stipulation and any other  
25 efforts that may become necessary by order of this Court, or otherwise, to effectuate  
26 this Stipulation and the terms set forth herein. As soon as practicable after execution  
27 of this Stipulation, Class Counsel shall, with the assistance and cooperation of  
28

1 Defendant and its counsel, take all necessary steps to secure the final approval of this  
2 Stipulation from the Court.

3 Defendant shall not oppose Class Counsel's motion for preliminary  
4 approval of the Settlement so long as the motion and supporting papers are consistent  
5 with the terms of this Stipulation and provide an unbiased description of the litigation  
6 and settlement. Class Counsel shall provide Defendant with a reasonable opportunity  
7 to review, and provide comments to, the motion for preliminary approval of the  
8 Settlement before the motion and supporting papers are filed with the Court.  
9 Notwithstanding the foregoing, Defendant may, without opposing the preliminary  
10 approval motion, advise the Court if Defendant disagrees with any of the factual  
11 statements included by the Named Plaintiff in the motion and supporting papers.

12 61. Non-Interference With Claims Procedure. The Parties and their counsel  
13 agree that Class Counsel has the right to seek, solicit and otherwise encourage Class  
14 Members to submit Claim Forms. Defendant agrees that it will not discourage any  
15 Class Member from submitting a Claim Form, or encourage any Class Member to  
16 submit an Opt-Out Request or objections to the Stipulation or to appeal from the Final  
17 Approval Order or judgment.

18 62. Final Order. Named Plaintiff will request, and Defendant will concur in  
19 said request, that the Court enter, after the Settlement Hearing finally approving this  
20 Stipulation, a Final Order. Named Plaintiffs will request that the Final Order find that  
21 this Stipulation is fair, just, equitable, reasonable, adequate and in the best interests of  
22 the Class Members; permanently enjoin all Plaintiff Class Members from pursuing, or  
23 seeking to reopen, Settled Claims against the Released Parties; and require the Parties  
24 to carry out the provisions of this Stipulation.

25 63. Automatic Voiding Of Stipulation If Settlement Not Finalized. If for any  
26 reason the Settlement set forth in this Stipulation does not become final, the Settlement  
27 shall be null and void and the orders and judgment to be entered pursuant to this  
28 Stipulation shall be vacated, and the Parties will be returned to the status quo prior to

1 entering this Stipulation with respect to the Action, as if the Parties had never entered  
2 into this Stipulation. In addition, in such event, the Stipulation and all negotiations,  
3 court orders and proceedings directly relating thereto shall be without prejudice to the  
4 rights of any and all parties hereto, and evidence relating to the Stipulation and all  
5 negotiations shall not be admissible or discoverable in the Action or otherwise.

6       64.     Invalidation Of Stipulation For Failure To Satisfy Conditions. The terms  
7 and provisions of Paragraphs 1 through 79 of this Stipulation are not recitals, but are  
8 deemed to constitute contractual terms. In the event that any of the material terms or  
9 conditions set forth in Paragraphs 1 through 79 of this Stipulation is not fully and  
10 completely satisfied, this Stipulation shall terminate and all terms of the Stipulation  
11 including, but not limited to, the payment of Settlement Payments to Qualified  
12 Claimants, the payment of Class Counsel Fees and Costs, the payment of the Class  
13 Representative Payments to the Named Plaintiffs and any releases, shall be void. In  
14 such event, nothing in this Stipulation shall be used, construed or admissible as  
15 evidence by or against any Party as a determination, admission, or concession of any  
16 issue of law or fact in this litigation, or in any other proceeding for any purpose; and  
17 the Parties do not waive, and instead expressly reserve, their respective rights to  
18 prosecute and defend this litigation as if this Stipulation never existed. In addition,  
19 notwithstanding the generality of the foregoing, if this Stipulation is terminated for  
20 failure to satisfy any of the terms or conditions of Paragraphs 1 through 79 of this  
21 Stipulation, Defendant shall not be obligated to create or maintain any type of  
22 settlement fund, and shall not be obligated to make any monetary or other payments to  
23 any Class Member, to Class Counsel, or to the Named Plaintiffs.

24       65.     Right To Void Settlement For Excessive Opt-Outs. If more than five  
25 percent (5%) of the Class Members timely and properly submit Opt-Out Requests,  
26 Defendant has the exclusive right to void this Settlement. Defendant shall make its  
27 election within ten (10) business days after the closing of the Opt Out Period. If the  
28 Settlement is not approved or is voided, neither the Class Representative nor Class

1 Counsel shall be liable for any costs of administration. This five (5%) percent opt out  
2 threshold shall be triggered if (a) the total number of Class Members who timely and  
3 properly submit Opt-Out Requests equals or exceeds five (5%) percent of the  
4 Settlement Class, or (b) if the dollar value of claims of all Settlement Class Members  
5 who timely and properly submit Opt-Out Requests equals or exceeds five (5%) percent  
6 of the NSA.

7 66. Notices. All notices, requests, demands and other communications  
8 required or permitted to be given pursuant to this Stipulation shall be in writing, and  
9 shall be delivered personally or by first class mail to the undersigned persons at their  
10 respective addresses as set forth below:

11 CLASS COUNSEL:

12 IRA SPIRO  
13 ira@spiomoss.com  
14 H. SCOTT LEVIANT  
15 scott@spiomoss.com  
16 SPIRO MOSS LLP  
17 11377 W. Olympic Blvd., 5th Floor  
18 Los Angeles, CA 90064.1683  
19 Telephone: 310.235.2468  
20 Fax No.: 310.235.2456

21 SAHAG MAJARIAN, II  
22 sahagii@aol.com  
23 LAW OFFICES OF SAHAG  
24 MAJARIAN, II  
25 18250 Ventura Blvd.  
26 Tarzana, CA 91356  
27 Telephone: 818.609.0807  
28 Fax No.: 818.609.0892

COUNSEL FOR DEFENDANT:

SCOTT M. LIDMAN, ESQ.  
slidman@littler.com  
LITTLER MENDELSON, P.C.  
A Professional Corporation

1 2049 Century Park East, 5th Floor  
2 Los Angeles, CA 90067.3107  
3 Telephone: 310.553.0308  
4 Facsimile: 310.553.5583

5 SETTLEMENT ADMINISTRATOR

6 CPT Group, Inc.  
7 c/o Tony Cortes, Vice President, Class Action Services  
8 16630 Aston, Irvine, California 92606  
9 Main Telephone: (800) 542-0900  
10 (or other Settlement Administrator agreed by the Parties)

11 67. Modification In Writing. This Stipulation may be altered, amended,  
12 modified or waived, in whole or in part, only in a writing signed by all signatories to  
13 this Stipulation. This Stipulation may not be amended, altered, modified or waived, in  
14 whole or in part, orally.

15 68. Ongoing Cooperation. The Named Plaintiffs and Defendant shall  
16 execute all documents and perform all acts necessary and proper to effectuate the terms  
17 of this Stipulation. The executing of documents must take place prior to the Final  
18 Hearing Date.

19 69. Binding on Successors. This Stipulation shall be binding and shall inure  
20 to the benefit of the Parties and their respective successors, assigns, executors,  
21 administrators, heirs and legal representatives.

22 70. Entire Stipulation. This Stipulation constitutes the full, complete and  
23 entire understanding, Stipulation and arrangement between the Named Plaintiffs and  
24 the Class Members on the one hand and Defendant on the other hand with respect to  
25 the settlement of the Action and the Settled Claims against the Released Parties. This  
26 Stipulation supersedes any and all prior oral or written understandings, Stipulations and  
27 arrangements between the Parties with respect to the Settlement of the Action and the  
28 Settled Claims against the Released Parties. Except those set forth expressly in this  
Stipulation, there are no other Stipulations, covenants, promises, representations or

1 arrangements between the Parties with respect to the settlement of the Action and the  
2 Settled Claims against the Released Parties.

3 71. Multiple Originals/Execution In Counterpart. This Stipulation may be  
4 signed in one or more counterparts. All executed copies of this Settlement Stipulation,  
5 and photocopies thereof (including facsimile copies of the signature pages), shall have  
6 the same force and effect and shall be as legally binding and enforceable as the  
7 original.

8 72. Captions. The captions and section numbers in this Stipulation are  
9 inserted for the reader's convenience, and in no way define, limit, construe, or describe  
10 the scope or intent of the provisions of this Stipulation.

11 73. Governing Law. This Stipulation shall be interpreted, construed,  
12 enforced, and administered in accordance with the laws of the State of California,  
13 without regard to conflict of law rules.

14 74. Reservation Of Jurisdiction. The Court shall retain jurisdiction for  
15 purposes of interpreting and enforcing the terms of this Stipulation.

16 75. Mutual Preparation. The Parties have had a full opportunity to negotiate  
17 the terms and conditions of this Stipulation. Accordingly, this Stipulation shall not be  
18 construed more strictly against one party than another merely by virtue of the fact that  
19 it may have been prepared by counsel for one of the Parties, it being recognized that,  
20 because of the arms-length negotiations between the Parties, all Parties have  
21 contributed to the preparation of this Stipulation.

22 76. Recitals. The Parties to this Stipulation agree, covenant, and represent  
23 that each and every provision of this Stipulation shall be deemed to be contractual, and  
24 that they shall not be treated as mere recitals at any time or for any purpose.

25 77. Warranties And Representations. With respect to themselves, each of the  
26 Parties to this Stipulation and/or their agent or counsel represents, covenants and  
27 warrants that (a) they have full power and authority to enter into and consummate all  
28 transactions contemplated by this Stipulation and have duly authorized the execution,

1 delivery and performance of this Stipulation; and (b) the person executing this  
2 Stipulation has the full right, power and authority to enter into this Stipulation on  
3 behalf of the party for whom he/she has executed this Stipulation, and the full right,  
4 power and authority to execute any and all necessary instruments in connection  
5 herewith, and to fully bind such party to the terms and obligations of this Stipulation.

6 78. Representation By Counsel. The Parties acknowledge that they have  
7 been represented by counsel throughout all negotiations that preceded the execution of  
8 this Stipulation, and that this Stipulation has been executed with the consent and advice  
9 of counsel. Further, the Named Plaintiffs and Class Counsel warrant and represent that  
10 there are no liens on the Stipulation, and that after entry by the Court of the Final Order  
11 and Judgment, Defendant may distribute funds to be paid to Qualified Claimants, Class  
12 Counsel, and the Named Plaintiffs as provided by this Stipulation.

13 79. Authorization By Named Plaintiffs. The Named Plaintiffs authorize Class Counsel to  
14 sign this Stipulation and further agree not to request to be excluded from the Class and not to object  
15 to any terms of this Stipulation. Any such request for exclusion or objection shall therefore be void  
16 and of no force or effect.

17 IT IS SO AGREED:

18  
19 Dated: 10-08 - , 2010

20 By: Jesus Herrera  
Jesus Herrera  
Plaintiff/Class Representative

21  
22  
23 Dated: 10-4 , 2010

24 By: Sabino Nungaray  
Sabino Nungaray  
Plaintiff/Class Representative

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26  
27 Dated: 10-4 - , 2010

28 By: Jose Manuel Cervantes  
Jose Manuel Cervantes  
Plaintiff/Class Representative

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Dated: \_\_\_\_\_, 2010

**VALLEYCREST LANDSCAPE  
DEVELOPMENT, INC.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2010

**LAW OFFICES OF SAHAG  
MAJARIAN, II**

By: \_\_\_\_\_  
Sahag Majarian, II  
Class Counsel

Dated: Sept. 30, 2010

**SPIRO MOSS LLP**

By:   
H. Scott Leviant  
Class Counsel

Dated: \_\_\_\_\_, 2010

**LITTLER MENDELSON, P.C.**

By: \_\_\_\_\_  
Scott M. Lidman, Esq.  
Attorneys for Defendant

Firmwide: 97426431.1 062157.1002

1 Dated: \_\_\_\_\_, 2010


**VALLEYCREST LANDSCAPE  
DEVELOPMENT, INC.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

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6  
7 Dated: 10/8, 2010

**LAW OFFICES OF SAHAG  
MAJARIAN, II**

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9  
10 By:   
Sahag Majarian, II  
Class Counsel

11 Dated: \_\_\_\_\_, 2010

**SPIRO MOSS LLP**

12  
13 By: \_\_\_\_\_  
H. Scott Leviant  
Class Counsel

14  
15  
16 Dated: \_\_\_\_\_, 2010

**LITTLER MENDELSON, P.C.**

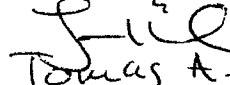
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18  
19 By: \_\_\_\_\_  
Scott M. Lidman, Esq.  
Attorneys for Defendant

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21 Firmwide: 97426431.1 062157.1002

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Dated: 10/4/, 2010

**VALLEYCREST LANDSCAPE DEVELOPMENT, INC.**

By:   
Thomas A. Kuehn

Title: Secretary

Dated: \_\_\_\_\_, 2010

**LAW OFFICES OF SAHAG MAJARIAN, II**

By: \_\_\_\_\_  
Sahag Majarian, II  
Class Counsel


Dated: \_\_\_\_\_, 2010

**SPIRO MOSS LLP**

By: \_\_\_\_\_  
H. Scott Leviant  
Class Counsel

Dated: 10-4, 2010

**LITTLER MENDELSON, P.C.**

By:   
Scott M. Lidman, Esq.  
Attorneys for Defendant

Firmwide: 97426431.1 062157.1002