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on behalf of himself and all others similarly situated and aggrieved

12 *Additional Counsel Listed on Next Page*
13

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF ORANGE**

16 DONALDO MUNOZ GARCIA, an
individual and on behalf of all others
17 similarly situated,

18
19 Plaintiff,

20 v.

21 ALL COUNTY ENVIRONMENTAL &
RESTORATION, INC., a California
22 corporation; DONALD MOSER, an
individual; and DOES 1 through 100,
23 inclusive,

24
25 Defendants.
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CASE NO.: 30-2021-01236384-CU-OE-
CXC

[Assigned for all purposes to the Hon.
Melissa R. McCormick in Dept. CX 104]

CLASS ACTION

**AMENDMENT TO JOINT
STIPULATION RE: CLASS ACTION
AND REPRESENTATIVE ACTION
SETTLEMENT**

Action Filed: December 14, 2021
Trial Date: None set

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& RESTORATION, Inc. and DONALD MOSER

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Pursuant to this Court's January 18, 2024 order continuing the hearing on plaintiff Donaldo Munoz Garcia's ("Plaintiff") motion for Preliminary Approval of Class Action and Representative Action Settlement and Provisional Class Certification for Settlement Purposes Only, Plaintiff and defendants ALL COUNTY ENVIRONMENTAL & RESTORATION, INC., and DONALD MOSER (collectively "Defendants") hereby agree to the following amendments to the Joint Stipulation re: Class Action and Representative Action Settlement:

1. Paragraph 1B shall be modified to now state "Aggrieved Employees" means all individuals who work or worked for Defendants during the PAGA Period as non-exempt, hourly-paid employees in California."
2. Paragraph 1D shall be modified to now state: "Class Period" means December 14, 2017 through the date the Court grants Preliminary Approval of the Class and PAGA Settlement, unless Defendants elect to shorten the Class Period pursuant to this Agreement.
3. Paragraph 1S shall be modified to now state: "PAGA Payment" is the 25% portion of the PAGA Settlement Amount, (i.e., \$10,000) that will be paid to Aggrieved Employees on a pro rata basis based on the PAGA Pay Periods worked as non-exempt, hourly-paid employees in California in the PAGA Period, which would be in addition to their Individual Settlement Payment if they are Participating Class Members, as well.
4. Paragraph 1U shall be modified to now state: "PAGA Settlement Amount" means the amount of Forty Thousand Dollars and Zero Cents (\$40,000.00) which the Parties agree shall be allocated toward the resolution of the PAGA claim which is to be paid from the Gross Settlement Amount. Pursuant to Labor Code section 2699.3, Seventy-Five percent (75%) of the PAGA Settlement Amount, or Thirty Thousand Dollars and Zero Cents (\$30,000.00), will be paid to the LWDA (i.e., the LWDA Payment) and Twenty-Five percent (25%) of the PAGA Settlement Amount, or Ten Thousand Dollars and Zero Cents (\$10,000.00), will be paid to Aggrieved Employees on a pro rata basis based on the PAGA Pay Periods worked for Defendants as a non-exempt, hourly-paid employee in California in the PAGA Period (i.e. the PAGA Payment)."

- 1 5. Paragraph 1(AA) shall be modified to now state: "Response Deadline" means the deadline
2 for Settlement Class Members to mail any Requests for Exclusion, Objections, or
3 Workweek/PAGA Pay Period Disputes to the Settlement Administrator, which is sixty
4 (60) calendar days from the date that the Class Notice is first mailed in English and
5 Spanish by the Settlement Administrator, unless a Class Member's notice is re-mailed. In
6 such an instance, the Response Deadline shall be fifteen (15) calendar days from the re-
7 mailing, or sixty (60) calendar days from the date of the initial mailing, whichever is later.
8 The date of the postmark shall be the exclusive means for determining whether a Request
9 for Exclusion, Objection, or Workweek/ PAGA Pay Period Dispute was submitted by the
10 Response Deadline.
- 11 6. The following shall be added as Paragraph 1HH: "PAGA Pay Periods" means any Pay
12 Period during which an Aggrieved Employee worked for Defendants for at least one day
13 during the PAGA Period.
- 14 7. The following shall be added as Paragraph 1II: "Effective Date" means the date by when
15 both of the following have occurred: (a) the Court enters a Judgment on its Order Granting
16 Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of
17 the latest of the following occurrences: (a) if no Participating Class Member objects to the
18 Settlement, the day the Court enters Judgment; (b) if one or more Participating Class
19 Members objects to the Settlement, the day after the deadline for filing a notice of appeal
20 from the Judgment; or if a timely appeal from the Judgment is filed, the day after the
21 appellate court affirms the Judgment and issues a remittitur.
- 22 8. Paragraph 5 shall be modified to now state: "After full execution of this Agreement,
23 Plaintiff will move for an order granting preliminary approval of the Settlement, approving
24 and directing the mailing of the proposed Class Notice attached hereto as Exhibit "A",
25 conditionally certifying the Settlement Class for settlement purposes only, and approving
26 the deadlines proposed by the Parties for the submission of Requests for Exclusion,
27 Workweek/ PAGA Pay Period Disputes, and Objections. If and when the Court
28 preliminarily approves the Settlement, and after administration of the Class Notice in a

1 manner consistent with the Court's Preliminary Approval Order, Plaintiff will move for an
2 order finally approving the Settlement and seek entry of a Judgment in line with this
3 Settlement. The Parties may both respond to any Objections lodged to final approval of the
4 Settlement up to five (5) court days before the Final Approval Hearing. Class Counsel and
5 Defendants' Counsel shall file with the Court all disputes submitted by Class Members, the
6 evidence submitted, and the resolution of the disputes, and the Court may review any
7 decision made by counsel or the Settlement Administrator regarding a claim dispute.

8 9. Paragraph 7B shall be modified to now state: "Effective upon the funding of the Gross
9 Settlement Amount (which shall occur no later than 30 days after the Effective Date) and
10 Employer Taxes, Plaintiff and all Participating Class Members release all claims against
11 the Released Parties asserted in the Operative Complaint filed in the Action, or any and all
12 claims that could have been asserted against the Released Parties based on the factual
13 allegations in the Operative Complaint. For the duration of the Class Period, the release
14 includes the following claims which were alleged in the Operative Complaint: (1) all
15 claims for failure to pay overtime wages; (2) all claims for failure to pay minimum wages;
16 (3) all claims for failure to provide meal periods or compensation in lieu thereof; (4) all
17 claims for failure to provide rest periods or compensation in lieu thereof; (5) all claims for
18 failure to pay all wages due upon separation from employment; (6) all claims for failure to
19 issue accurate and compliant wage statements; and (7) all claims for failure to indemnify;
20 and (8) all claims asserted through California Business & Professions Code section 17200,
21 *et seq.* arising out of the Labor Code violations referenced in the Complaint (the "Class
22 Released Claims").

23 10. Paragraph 7C shall be modified to now state: "Effective upon the funding of the Gross
24 Settlement Amount (which shall occur no later than 30 days after the Effective Date) and
25 Employer Taxes, all Aggrieved Employees, and, to the extent permitted by law, the State
26 of California, are deemed to release, all claims asserted in the PAGA Notice and thereafter
27 alleged in the Operative Complaint for civil penalties pursuant to PAGA, or that could
28 have been alleged based on the factual allegations in the PAGA Notice and Operative

1 Complaint, pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 in
2 connection with alleged violations of Labor Code sections 96, 98.6, 200, 201, 202, 203,
3 204, 210, 226, 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5,
4 1174, 1174.5, 1194, 1197, 1197.5, 1198.5, 2699, 2802, and 2810.5 (the "PAGA Released
5 Claims"). The Class Released Claims and PAGA Released Claims shall be referred to
6 herein as the "Released Claims".

7 11. Paragraph 7E shall be modified to now state: "Effective upon the funding of the Gross
8 Settlement Amount (which shall occur no later than 30 days after the Effective Date) and
9 Employer Taxes, Plaintiff, and Plaintiff's respective former and present spouses,
10 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally,
11 release the additional following General Release: Plaintiff releases the Released Parties
12 from all claims, transactions, occurrences, demands, rights, liabilities and causes of action
13 of every nature and description whatsoever, known or unknown, asserted or that might
14 have been asserted, whether in tort, contract, or for violation of any state or federal statute,
15 rule, law or regulation arising out of, relating to, or in connection with any act or omission
16 of the Released Parties through the date of full execution of this Agreement in connection
17 with Plaintiff's employment with Defendants or the termination thereof, except for any and
18 all other claims that may not be released as a matter of law through this Agreement. This
19 General Release includes, without limitation: (1) all claims for violation of any federal,
20 state or local statute, ordinance or regulation relating to employment benefits, leaves of
21 absence, or discrimination, harassment, retaliation, or whistleblowing in employment,
22 specifically including, without limitation, the California Fair Employment and Housing
23 Act, the California Family Rights Act, Title VII of the Civil Rights Act of 1964, the
24 Family and Medical Leave Act, the Age Discrimination in Employment Act, the Older
25 Workers Benefit Protection Act, the Genetic Information Nondiscrimination Act, the
26 Americans with Disabilities Act, and the Employee Retirement Income Security Act, the
27 Consolidated Omnibus Budget Reconciliation Act, the Securities Act, the Immigration
28 Reform and Control Act the Worker Adjustment and Retraining Notification Act of 1988,

1 the California Worker Adjustment and Retraining Notification Act, the Uniformed Service
2 Employment and Reemployment Rights Act, and any regulation of any administrative
3 agency or governmental authority relating to employment benefits or discrimination or
4 harassment or retaliation in employment; (2) all claims for failure to pay minimum or
5 overtime wages, failure to timely pay wages, failure to provide accurate itemized wage
6 statements, failure to maintain accurate records, failure to reimburse business expenses,
7 failure to provide meal periods or rest breaks, failure to provide paid sick leave, failure to
8 post notice of paydays and time and place of payment, and any claim for violations of the
9 California Labor Code, California's Business and Professions Code § 17200 et seq., and
10 the applicable California Industrial Welfare Commission Wage Order; (3) any non-
11 statutory tort or contractual claim, including all claims for breach of oral, implied or
12 written contract, breach of implied covenant of good faith and fair dealing, negligent or
13 intentional infliction of emotional distress, and conversion; (4) all claims for wrongful
14 termination of employment; (5) all claims for wages, penalties and/or benefits; and (6) all
15 claims for attorneys' fees and costs. Plaintiff's General Release does not extend to any
16 claims or actions to enforce this Agreement, or to any claims for vested benefits,
17 unemployment benefits, disability benefits, social security benefits, workers' compensation
18 benefits that arose at any time. Plaintiff acknowledges that he may discover facts or law
19 different from, or in addition to, the facts or law that Plaintiff now know or believe to be
20 true but agree, nonetheless, that Plaintiff's General Release shall be and remain effective in
21 all respects, notwithstanding such different or additional facts or their discovery of them.
22 To the extent of the General Release provided herein, Plaintiff stipulates and agrees that,
23 upon entry of an Order granting Final Approval of the Settlement, entry of Judgment, and
24 payment by Defendants to the Settlement Administrator selected of the full Gross
25 Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, he shall
26 have expressly waived and relinquished, to the fullest extent permitted by law, the
27 provisions, rights and benefits of Section 1542 of the California Civil Code, or any other
28 similar provision under federal or state

1 law, which provides:

2 A general release does not extend to claims that the creditor or
3 releasing party does not know or suspect to exist in his or her
4 favor at the time of executing the release and that, if known by
5 him or her, would have materially affected his or her settlement
6 with the debtor or released party.

- 7 12. Paragraph 9A(2)(j) shall be modified to now state: "that the Settlement Class Member
8 must notify the Settlement Administrator no later than the Response Deadline if the
9 Settlement Class Member disputes the accuracy of the number of Workweeks and/or
10 PAGA Pay Periods as set forth on his or her Class Notice ("Workweek/ PAGA Pay Period
11 Dispute"). If a Settlement Class Member fails to timely dispute the number of Workweeks
12 and/or PAGA Pay Periods attributed to him or her in conformity with the instructions in
13 the Class Notice, then he or she shall be deemed to have waived any objection to its
14 accuracy and any claim to any additional settlement payment based on different data."
15 13. Paragraph 9(B) shall be modified to now state: Only Participating Class Members may
16 object to the Settlement. In order for any Settlement Class Member to object to this
17 Settlement in writing, or any term of it, he or she must do so by mailing a written objection
18 to the Settlement Administrator at the address provided on the Class Notice no later than
19 the Response Deadline. The Settlement Administrator shall email a copy of the Objection
20 forthwith to Class Counsel and Defendants' counsel and attach copies of all Objections to
21 the Declaration it provides Class Counsel, which Class Counsel shall file in support of
22 Plaintiff's Motion for Final Approval. The Objection should set forth in writing: (1) the
23 Objector's name; (2) the Objector's address; (3) the last four digits of the Objector's Social
24 Security Number; (4) the Objector's signature; and (5) the reason(s) for the Objection the
25 Objector asserts in support of the Objection. If a Settlement Class Member objects to the
26 Settlement, the Settlement Class Member will remain a member of the Settlement Class
27 and if the Court approves this Agreement, the Settlement Class Member will be bound by
28 the terms of the Settlement in the same way and to the same extent as a Settlement Class

1 Member who does not object. The date of mailing of the Class Notice to the objecting
2 Settlement Class Member shall be conclusively determined according to the records of the
3 Settlement Administrator. Settlement Class Members need not object in writing to be
4 heard at the Final Approval Hearing; they may object or comment in person at the hearing
5 at their own expense. Class Counsel and Defendants' Counsel may respond to any
6 objection lodged with the Court up to five (5) court days before the Final Approval
7 Hearing.

8 14. Paragraph 9(C) shall be modified to now state: "Any Settlement Class Member may
9 request exclusion from (i.e., "opt out" of) the Settlement by mailing a written request to be
10 excluded from the Settlement ("Request for Exclusion") to the Settlement Administrator,
11 postmarked on or before the Response Deadline. To be valid, a Request for Exclusion must
12 include: (1) the Class Member's name; (2) the last four digits of the Class Member's Social
13 Security Number; (3) the Class Member's signature; and (4) any statement of similar
14 meaning standing for the proposition that the Class Member does not wish to participate in
15 the Settlement, or the following statement: "Please exclude me from the Settlement Class
16 in the *Munoz Garcia v. All County Environmental & Restoration, Inc., et al.* matter". The
17 Settlement Administrator shall immediately provide copies of all Requests for Exclusion to
18 Class Counsel and Defendants' Counsel and shall report the Requests for Exclusions that it
19 receives, to the Court, in its declaration to be provided in advance of the Final Approval
20 Hearing. Any Settlement Class Member who requests exclusion using this procedure will
21 not be entitled to receive any payment from the Settlement and will not be bound by the
22 Settlement Agreement or have any right to object to, appeal, or comment on the
23 Settlement. Any Settlement Class Member who does not opt out of the Settlement by
24 submitting a timely and valid Request for Exclusion will be bound by all terms of the
25 Settlement, including those pertaining to the Released Claims, as well as any Judgment
26 that may be entered by the Court if Final Approval of the Settlement is granted. A
27 Settlement Class Member cannot submit both a Request for Exclusion and an objection. If
28 a Settlement Class Member submits an Objection and a Request for Exclusion, the Request

1 for Exclusion will control and the Objection will be overruled. Settlement Class Members
2 who worked during the PAGA Period as Aggrieved Employees that submit a valid Request
3 for Exclusion will still be deemed Aggrieved Employees, will still receive their Individual
4 PAGA Payments, and will be bound by the release of the PAGA Released Claims.”

5 15. Paragraph 9(D) shall be modified to now state: Each Settlement Class Member and
6 Aggrieved Employee may dispute the number of Workweeks and/or PAGA Pay Periods
7 attributed to him or her on his or her Class Notice (“Workweek/PAGA Pay Period
8 Dispute”). Any such disputes must be mailed to the Settlement Administrator by the
9 Settlement Class Member, postmarked on or before the Response Deadline. The
10 Settlement Administrator shall immediately provide copies of all disputes to counsel for
11 Defendants and shall immediately attempt to resolve all such disputes directly with
12 relevant Settlement Class Member(s) and/or Aggrieved Employee(s) with the assistance of
13 Defendants’ Counsel. If the dispute cannot be resolved in this manner, the Court shall
14 adjudicate the dispute. The Parties shall file with the Court all Workweek/PAGA Pay
15 Period Disputes, any evidence provided by a Settlement Class Member and/or Aggrieved
16 Employee, and any resolution of the dispute. The Court may review any decision made by
17 the Parties or the Settlement Administrator regarding a Workweek/PAGA Pay Period
18 Dispute.

19 16. Paragraph 10 shall be modified to now state: “Individual Settlement Payments will be
20 calculated and distributed to Participating Class Members from the Net Settlement Amount
21 on a *pro rata* basis, based on the Participating Class Members’ respective number of
22 Workweeks during the Class Period. Individual PAGA Payments to Aggrieved Employees
23 will be calculated and distributed to Aggrieved Employees from the PAGA Payment on a
24 *pro rata* basis based on Aggrieved Employees’ respective number of PAGA Pay Periods
25 during the PAGA Period. Specific calculations of the Individual Settlement
26 Shares/Payments and Individual PAGA Payments to Aggrieved Employees will be made
27 as follows:”
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17. Paragraph 10(A) shall be modified to now state: "The Settlement Administrator will determine the total number of Workweeks worked by each Settlement Class Member during the Class Period ("Class Member's Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement Class Members during the Class Period ("Class Workweeks"). Additionally, the Settlement Administrator will determine the total number of PAGA Pay Periods worked by each Aggrieved Employee during the PAGA Period ("Aggrieved Employee's Pay Periods"), as well as the aggregate number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period.

18. Paragraph 10(E) shall be modified to now state: To determine each Aggrieved Employee's Individual PAGA Payment, the Settlement Administrator will use the following formula:
$$\text{Aggrieved Employee's Individual PAGA Payment} = (\text{Aggrieved Employee's PAGA Pay Periods} \div \text{total number of pay periods worked by all Aggrieved Employees during the PAGA Period}) \times \$10,000.00 \text{ (the PAGA Payment).}$$

19. Paragraph 11A shall be modified to now state: Participating Class Members will receive an Individual Settlement Payment and Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement Payment and Individual PAGA Payment checks shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date of their issuance. Within seven (7) calendar days after expiration of the 180-day period, checks for such payments shall be canceled and funds associated with such checks shall be transmitted to the California Controller's Office, Unclaimed Property Fund to be held in the name of each Participating Class Member and Aggrieve Employee. The Settlement Administrator shall conduct a skip-trace on any returned checks.¹

20. Paragraph 11B shall be modified to now state: Defendants shall, within thirty (30) calendar days after the Effective Date, make payment of the Gross Settlement Amount and

¹ Paragraph 9(A)(3) provides for skip tracing of returned mail ("If a Class Notice from the initial notice mailing is returned as undeliverable, the Settlement Administrator will attempt to obtain a current address for the Settlement Class Member to whom the returned Class Notice had been mailed, within five (5) calendar days of receipt of the returned Class Notice, by undertaking skip trace.")

1 Employer Taxes to the Settlement Administrator pursuant to Internal Revenue Code
2 section 1.468B-1 for deposit in an interest-bearing qualified settlement account (“QSA”)
3 with an FDIC insured banking institution, for distribution in accordance with this
4 Agreement and the Court’s Orders and subject to the conditions described herein.

5 21. Paragraph 11C shall be modified to now state: Within seven (7) calendar days after
6 payment of the full Gross Settlement Amount and Employer Taxes by Defendants, or as
7 soon thereafter as practicable, the Settlement Administrator shall distribute all payments
8 due from the QSA, including: (1) the Service Award to Plaintiff; (2) the Attorneys’ Fees
9 and Cost Award to be paid to Class Counsel; (3) the Settlement Administrator Costs; (4)
10 the LWDA Payment; and (5) Individual PAGA Payments to Aggrieved Employees; and
11 (6) Individual Settlement Payments to Participating Class Members, less applicable taxes
12 and withholdings. All interest accrued shall be for the benefit of the Class Members and
13 Aggrieved Employees and distributed on a pro rata basis to Participating Class Members
14 and Aggrieved Employees based on the number of Workweeks and PAGA Pay Periods
15 worked by them in the Class Period and PAGA Period.

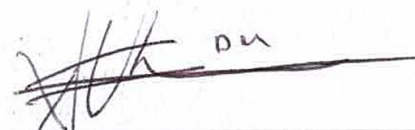
16 22. The following shall be added to paragraph 18: The Settlement Administrator shall also post
17 on its website all key case documents pertaining to the Settlement, including the operative
18 complaint, the PAGA Notice Letter, the Settlement Agreement, any amendments thereto,
19 the Notice, the orders granting preliminary approval and final approval, and the Judgment.
20 The Judgment shall remain posted on the Settlement Administrator’s website for at least
21 180 days.

22 23. Paragraph 19A shall be modified to now state: “This Agreement, and the Amendment
23 attached hereto as Exhibit B (together, the “Agreement”), constitute the entire agreement
24 between the Parties with respect to its and their subject matter. Except as expressly
25 provided herein, the Agreement has not been executed in reliance upon any other written
26 or oral representations or terms, and no such extrinsic oral or written representations or
27 terms shall modify, vary or contradict their terms. In entering into the Agreement, the
28 Parties agree that the Agreement is to be construed according to the Agreement’s terms and

1 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted
2 and enforced under the laws of the State of California, both in its procedural and
3 substantive aspects, without regard to its conflict of law provisions. Any claim arising out
4 of or relating to the Agreement, or the subject matter hereof, will be resolved solely and
5 exclusively in the Superior Court of the State of California for the County of Orange, and
6 Plaintiff and Defendants hereby consent to the personal jurisdiction of the Court in the
7 Action over it solely in connection therewith. The foregoing is only limited to disputes
8 concerning the Agreement. The Parties, and each of them, participated in the negotiation
9 and drafting of the Agreement and had available to them the advice and assistance of
10 independent counsel. As such, neither Plaintiff nor Defendants may claim that any
11 ambiguity in the Agreement should be construed against the other. The Agreement may be
12 modified only by a writing signed by counsel for the Parties and approved by the Court.”
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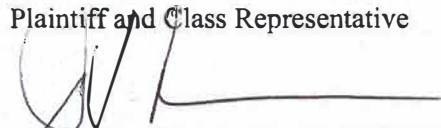
14 **IT IS SO AGREED:**

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16 Dated: May 21, 2024



DONALDO MUNOZ GARCIA
Plaintiff and Class Representative

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20 Dated: May 21, 2024



ALL COUNTY ENVIRONMENTAL &
RESTORATION, INC.
Defendant

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22 By: Donald V. Moser


23 Its: President
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Dated: May 21, 2024


DONALD MOSER
Defendant

By: Ronald V. Moser

Its: President

AGREED AS TO FORM:

Dated: May 3, 2024

Vedang J. Patel
DAVID D. BIBIYAN
VEDANG J. PATEL
Co-Counsel for Plaintiff DONALDO MUNOZ GARCIA

Dated: May 3, 2024

/s/ Michael Nourmand
MICHAEL NOURMAND
JAMES A. DE SARIO
Co-Counsel for Plaintiff DONALDO MUNOZ GARCIA

Dated: May 3, 2024

/s/ Hannah Sweiss
HANNAH SWEISS
Counsel for Defendants ALL COUNTY ENVIRONMENTAL & RESTORATION, INC.; and DONALD MOSER