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JS-6

8 Attorneys for the Plaintiff

9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA
 11

12 **ELAINE L. CHAO**,
 Secretary of Labor,
 13 United States Department of Labor,
 14 Plaintiff,

Case No. SA CV 08-997 AHS MLGx

15 v.

CONSENT JUDGMENT

16 **JOSE MARTINEZ TREE SERVICE, INC.**
 A California corporation; and,
 17 **JOSE L. GUERRERO**, Individually and as
 18 Managing Agent of the Corporate Defendant,
 19 Defendants.

20
 21 Plaintiff Elaine L. Chao, Secretary of Labor, United States Department of Labor
 22 (“Secretary”), and Defendants, Jose Martinez Tree Service, Inc., a California corpora-
 23 tion, and Jose L. Guerrero, individually and as managing agent of the corporate Defen-
 24 dant (collectively, “Defendants”), have agreed to resolve the matters in controversy in
 25 this civil action and consent to the entry of this Consent Judgment in accordance here-
 26 with:

27 A. The Secretary has filed a Complaint alleging that Defendants violated pro-
 28 visions of Sections 15(a)(2) and 15(a)(5) of the Fair Labor Standards Act of 1938, as

1 amended (“FLSA”), 29 U.S.C. §§ 215(a)(2) and 215(a)(5).

2 B. Defendants have appeared and (after having been advised by Plaintiff of the
3 right to retain the assistance of defense counsel) acknowledge receipt of a copy of the
4 Secretary’s Complaint.

5 C. Defendants waive issuance and service of process and waive answer and
6 any defenses to the Secretary’s Complaint.

7 D. The Secretary and Defendants waive Findings of Fact and Conclusions of
8 Law, and agree to the entry of this Consent Judgment in settlement of this action, with-
9 out further contest.

10 E. Defendants admit that the Court has jurisdiction over the parties and subject,
11 matter of this civil action and that venue lies in the Central District of California.

12 It is therefore, upon motion of the attorneys for the Secretary, and for cause
13 shown,

14 ORDERED, ADJUDGED, AND DECREED that the Defendants, their officers,
15 agents, servants, and employees and those persons in active concert or participation with
16 them who receive actual notice of this order (by personal service or otherwise) be, and
17 they hereby are, permanently enjoined and restrained from violating the provisions of
18 Sections 15(a)(2) and 15(a)(5) of the FLSA, 29 U.S.C. §§ 215(a)(2) and 215(a)(5), in
19 any of the following manners:

20 1. Defendants shall not, contrary to FLSA § 7, 29 U.S.C. § 207, employ any em-
21 ployee who in any workweek is engaged in commerce or in the production of goods for
22 commerce, within the meaning of the FLSA, or is employed in an enterprise engaged in
23 commerce or in the production of goods for commerce, within the meaning of the FLSA,
24 for any workweek longer than 40 hours unless such employee receives compensation for
25 his or her employment in excess of 40 hours in such workweek at a rate not less than one
26 and one-half times the regular rate at which he or she is employed.

27 2. Defendants shall not fail to make, keep, make available to authorized agents of
28 the Secretary for inspection, transcription, and/or copying, upon their demand for such

1 access, and preserve records of employees and of the wages, hours, and other conditions
2 and practices of employment maintained, as prescribed by regulations issued, and from
3 time to time amended, pursuant to FLSA §§ 11(c) and 15(a)(5), 29 U.S.C. §§ 211(c) and
4 215(a)(5) and the implementing regulations found in Title 29, Code of Federal Regula-
5 tions, Part 516.

6 3. Defendants, jointly and severally, shall not continue to withhold the payment
7 of \$ 140,804.41, in overtime pay hereby found to be due under the FLSA to 41 employ-
8 ees as a result of their employment by Defendants during the period of March 27, 2005
9 through November 18, 2006. The attached Exhibit 1 sets forth the name of each em-
10 ployee, the period of employment covered by this Consent Judgment, and the gross,
11 backwages due to each.

12 4. Defendants shall pay the backwages, plus 5% annual interest on the out-
13 standing balance starting from September 20, 2008 until the monetary provisions of this
14 Judgment are paid in full, according to the payment schedule shown on the attached Ex-
15 hibit 2. Each payment shall be made by a certified or cashier's check or money order
16 with "Martinez Tree Service" and "BWs + Interest" written on each, payable to the order
17 of the "Wage & Hour Div., Labor." The payments shall be delivered to Plaintiff's au-
18 thorized representatives by personal delivery or Certified Mail, Return Receipt Re-
19 quested, at:

20 U.S. Department of Labor, Wage and Hour Division,
21 Attn: Eduardo Huerta
22 770 The City Drive South, Suite 5710,
23 Orange, CA 92868,

24 on or before the date the payment is due.

25 a. In the event of any default in the timely making of any of the payments
26 specified herein, the full amount under the backwage provisions of this Judgment
27 which then remains unpaid, plus interest at the rate of ten percent (10%) per year,
28 from the date of entry of this Judgment until the full amount of this Judgment is

1 paid in full, shall become due and payable upon the Secretary's sending by ordi-
2 nary mail a written demand to the last business address of the Defendants then
3 known to the Secretary;

4 b. There will be no pre-payment penalty in the event the Defendants pay
5 the full amounts due under the monetary provisions of this Judgment prior to the
6 dates set forth above; and it is further

7 ORDERED that Defendants, in addition, agree to the imposition of a civil money
8 penalty in the amount of \$7,667.00, pursuant to FLSA Section 16(e), 29 U.S.C. § 216(e)
9 and consistent with 29 C.F.R. Part 580. Payment of the civil money penalty shall be de-
10 livered to the Plaintiff's representative at the same address as set forth above. Payment,
11 shall made by certified or cashier's check or money order, with "Martinez Tree Service"
12 and "CMPs" written thereon, payable to the order of the "Wage & Hour Div-Labor" on
13 the dates and in the amounts set forth in the Installment Payment Schedule attached as
14 Exhibit 2; and it is further

15 ORDERED that the Secretary shall allocate and distribute the remittances, or the
16 proceeds thereof, to the persons named in the attached Exhibit 1, or to their estates if that
17 be necessary, in her sole discretion, and any money not so paid within a period of three
18 years from the date of its receipt, because of an inability to locate the proper persons or
19 because of their refusal to accept it, shall be deposited in the Treasury of the United
20 States, as miscellaneous receipts, pursuant to 29 U.S.C. § 216(c); and, it is further

21 ORDERED that the filing, pursuit, and/or resolution of this proceeding with the
22 entry of this Judgment shall not act as or be asserted as a bar to any action under FLSA
23 § 16(b), 29 U.S.C. § 216(b), as to any employee not named on the attached Exhibit 1 nor
24 as to any employee named on the attached Exhibit 1 for any period not specified therein;
25 and, it is further

26 ORDERED that each party shall bear its own fees and other expenses incurred by
27 such party in connection with any stage of this proceeding, including but not limited to
28 attorneys' fees, which may be available under the Equal Access to Justice Act, as

1 amended; and, it is further

2 ORDERED that this Court shall retain jurisdiction of this action for purposes of
3 enforcing compliance with the terms of this Consent Judgment.
4

5 Dated: September 24, 2008

ALICEMARIE H. STOTLER

CHIEF U.S. DISTRICT COURT JUDGE

6 For the Defendants:

7 Each Defendant hereby appears, waives any
8 defense herein, consents to the entry of
9 this Judgment, and waives notice by the
10 Clerk of Court:

11 For: JOSE MARTINEZ TREE SERVICE, INC.

12 By: *Jose L. Guerrero*
13 JOSE L. GUERRERO

09-04-06

Date

14 Its: _____
15 President

16 *Jose L. Guerrero*
17 JOSE L. GUERRERO

09-04-06

Date

18 For the Plaintiff:

19 GREGORY F. JACOB
20 Solicitor of Labor

21 LAWRENCE BREWSTER
22 Regional Solicitor

23 DANIEL J. CHASEK
24 Acting Associate Regional Solicitor

25 *Susan Seletsky*
26 SUSAN SELETSKY, Attorney
27 Attorneys for the Plaintiff
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Sept. 5, 2008
Date

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Exhibit 1

LAST NAME	FIRST NAME	PERIOD	COVERED	GROSS BACKWAGES
Aguilar	Jose	03/27/2005	07/02/2005	\$ 1,347.39
Aguilar	Miguel	03/27/2005	03/10/2006	4,054.53
Aguilar	Ramiro	01/13/2006	10/27/2006	3,271.25
Aparicio	Rodolfo	06/25/2005	07/02/2005	192.48
Aparicio	Juan	10/01/2005	06/23/2006	2,805.23
Aparicio	Miguel	10/01/2005	09/20/2006	4,203.35
Blancas	Carlos	03/27/2005	05/21/2005	754.75 *
Corona	Amador	06/18/2005	07/09/2005	384.97
Diaz	Jose M.	03/27/2005	12/17/2005	3,000.08
Felipe	Luis	03/27/2005	11/19/2005	3,022.18
Franco	Antonio	03/27/2005	10/27/2006	5,477.01
Garcia	Emilio	12/03/2005	01/07/2006	369.43
Gonzalez	Armando	03/27/2005	06/23/2006	5,206.26
Gonzalez	Gustavo	03/27/2005	06/23/2006	6,843.33
Guerrero	David	03/27/2005	10/27/2006	6,242.42
Guerrero	Isidoro	03/27/2005	10/27/2006	6,293.14
Guerrero	Jose	03/27/2005	10/27/2006	7,062.78
Hernandez	Vicente	04/02/2005	10/22/2005	2,813.10
Lopez	Mario	03/27/2005	03/10/2006	4,000.76
Luna	Jorge S.	03/27/2005	06/23/2006	2,064.53
Luna	Jose	03/27/2005	05/26/2006	5089.67
Macias	Candelario	03/27/2005	08/01/2006	6,586.63
Macias	Santos	03/27/2005	08/01/2006	6,982.14
Marquez	Jose	03/27/2005	10/27/2006	3,932.85

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LAST NAME	FIRST NAME	PERIOD	COVERED	GROSS BACKWAGES
Martinez	Ignacio	03/27/2005	10/27/2006	\$ 4,487.61
Meneses	Freddy Y.	03/27/2005	01/13/2006	1,976.47
Munoz	Juan P.	03/27/2005	10/08/2005	2,657.70
Navarro	Francisco	04/22/2006	06/23/2006	962.42
Parga	Maria	08/06/2005	06/23/2006	323.26
Pineda	William	03/27/2005	05/26/2006	3,659.07
Renteria	Omar	03/27/2005	06/23/2006	4,774.34
Rivera	Ricardo	10/08/2005	10/27/2006	3,083.18
Rodriguez	Daniel A.	02/17/2006	08/10/2006	2,149.65
Sanchez	Esteban	03/27/2005	10/27/2006	6,111.18
Saucedo	Francisco	03/27/2005	05/21/2005	633.25
Saucedo	Jose	03/27/2005	10/27/2006	6,952.54
Serrato	Eliasol	03/27/2005	04/26/2005	288.73
Valenzuela	Cesar	03/27/2005	08/01/2006	4,406.43
Valenzuela	Jesus	06/04/2005	12/17/2005	2,416.56
Valenzuela	Julian	03/27/2005	12/24/2005	3,344.31
Vasquez	Ramiro	03/27/2005	05/07/2005	577.45

1 Exhibit 2

2 Payment Schedule – Jose Martinez Tree Service, Inc.

3 **INSTALLMENT PAYMENT SCHEDULE – Back Wages**

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PAYMENT DUE DATE	BACKWAGE PRINCIPAL DUE	BACKWAGE INTEREST DUE	CIVIL PENALTY DUE	TOTAL DUE
09/30/2008	\$ 8,945.36	\$ 503.35	\$ 2,555.66	\$ 12,004.37
10/31/2008	8,954.85	493.86	2,555.66	12,004.37
11/30/2008	8,964.39	484.32	2,555.66	12,004.37
12/31/2008	2,307.29	474.75	0	2,782.04
01/31/2009	2,316.90	465.14	0	2,782.04
02/28/2009	2,326.56	455.48	0	2,782.04
03/31/2009	2,336.25	445.79	0	2,782.04
04/30/2009	2,345.99	436.05	0	2,782.04
05/31/2009	2,355.76	426.28	0	2,782.04
06/30/2009	2,365.58	416.46	0	2,782.04
07/31/2009	2,375.43	406.61	0	2,782.04
08/31/2009	2,385.33	396.71	0	2,782.04
09/30/2009	2,395.27	386.77	0	2,782.04
10/31/2009	2,405.25	376.79	0	2,782.04
11/30/2009	2,415.27	366.77	0	2,782.04
12/31/2009	2,425.34	356.70	0	2,782.04
01/31/2010	2,435.44	346.60	0	2,782.04
02/28/2010	2,445.59	336.45	0	2,782.04
03/31/2010	2,455.78	326.26	0	2,782.04
04/30/2010	2,466.01	316.03	0	2,782.04
05/31/2010	2,476.29	305.75	0	2,782.04
06/30/2010	2,486.60	295.44	0	2,782.04
07/31/2010	2,496.97	285.07	0	2,782.04

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	PAYMENT DUE DATE	BACKWAGE PRINCIPAL DUE	BACKWAGE INTEREST DUE	CIVIL PENALTY DUE	TOTAL DUE
1	08/31/2010	\$ 2,507.37	\$ 274.67	0	\$ 2,782.04
2	09/30/2010	2,517.82	264.22	0	2,782.04
3	10/31/2010	2,528.31	253.73	0	2,782.04
4	11/30/2010	2,538.84	243.20	0	2,782.04
5	12/31/2010	2,549.42	232.62	0	2,782.04
6	01/31/2011	2,560.04	222.00	0	2,782.04
7	02/28/2011	2,570.71	211.33	0	2,782.04
8	03/31/2011	2,581.42	200.62	0	2,782.04 *
9	04/30/2011	2,592.18	189.86	0	2,782.04
10	05/31/2011	2,602.98	179.06	0	2,782.04
11	06/30/2011	2,613.82	168.22	0	2,782.04
12	07/31/2011	2,624.72	157.32	0	2,782.04
13	08/31/2011	2,635.65	146.39	0	2,782.04
14	09/30/2011	2,646.63	135.41	0	2,782.04
15	10/31/2011	2,657.66	124.38	0	2,782.04
16	11/30/2011	2,668.73	113.31	0	2,782.04
17	12/31/2011	2,679.85	102.19	0	2,782.04
18	01/31/2012	2,691.02	91.02	0	2,782.04
19	02/29/2012	2,702.23	79.81	0	2,782.04
20	03/31/2012	2,713.49	68.55	0	2,782.04
21	04/30/2012	2,724.80	57.24	0	2,782.04
22	05/31/2012	2,736.15	45.89	0	2,782.04
23	06/30/2012	2,747.55	34.49	0	2,782.04
24	07/31/2012	2,759.00	23.04	0	2,782.04
25	08/31/2012	2,770.53	11.54	0	2,782.07