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Attorneys for Defendants, Corey Nursery Inc.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

JESSE UNRUH,

PLAINTIFF,

v.

COREY NURSERY, INC., a California
Corporation; and DOES 1 through 10,

DEFENDANTS.

Case No. 20STCV15892

*Assigned for all purpose to the Honorable
Maren Nelson*

**JOINT STIPULATION AND CLASS
SETTLEMENT AGREEMENT**

1 IT IS HEREBY STIPULATED AND AGREED by and between Defendant COREY
2 NURSERY, INC. (hereinafter referred to as "Corey Nursery" or "Defendant"), and Plaintiff JESSE
3 UNRUH (hereinafter referred to as "Plaintiff") on his behalf and on behalf of the other "Class
4 Members" as defined herein and acting in his capacity as a representative under the Private Attorneys
5 General Act ("PAGA") (Labor Code section 2698 et seq.), on the other hand (hereafter collectively
6 referred to as the "Parties"), subject to the approval of the Court pursuant to section 382 of the
7 California *Code of Civil Procedure*, Rule 3.769 of the California *Rules of Court*, and California Labor
8 Code section 2699, that the settlement of the Action (as defined herein) shall be effectuated and
9 subject to the following terms and conditions:

10 **I. SUMMARY OF SETTLEMENT TERMS**

11 Under the terms of the Settlement, Defendants will pay the Maximum Settlement Amount
12 ("MSA") of Five Hundred Seventy-Five Thousand Dollars (\$575,000.00), without reversion, in
13 exchange for the full and final settlement and release of any and all claims that were or could have
14 been alleged in the operative Complaint in this Action, and subject to the terms and conditions
15 outlined in this Agreement (as defined herein). This is a no claims-made settlement and will be
16 administered by Phoenix Settlement Administrators a third-party administrator. Defendant
17 conditionally agrees to stipulate, solely for the limited purpose of consummating the terms of the
18 Settlement contained in this Agreement, to have the Court certify a class of all current and former
19 non-exempt, hourly paid employees, including all field sales representatives, who worked for
20 Defendant in California at any time during the Class Period (as defined herein).

21 In addition, Plaintiff and Class Counsel will seek from the MSA: (1) attorneys' fees in the
22 amount of One Hundred, Ninety-One Thousand, Six Hundred Sixty-Six Dollars and Sixty-Seven
23 Cents (\$191,666.67), representing 33.33% of the MSA; (2) litigation costs not to exceed Ten
24 Thousand Dollars (\$10,000.00); and (3) enhancement payment for Plaintiff Jesse Unruh in the amount
25 of Five Thousand Dollars (\$5,000.00). Furthermore, the Parties have agreed that Ten Thousand
26 Dollars (\$10,000) from the Maximum Settlement Amount will be allocated as civil penalties under
27 PAGA with 75% of this amount, Seven Thousand Five Hundred Dollars (\$7,500.00), to be paid to
28 the California Labor & Workforce Development Agency ("LWDA") in satisfaction of any claim for

1 civil penalties that may be owed to that agency under the PAGA. The other 25%, or Two Thousand
2 Five Hundred Dollars (\$2,500), will be distributed to the PAGA Employees (as defined herein) on a
3 pro-rata basis.

4 Finally, any and all costs associated with the administration of the Settlement, including but
5 not limited to giving notice to the Class regarding the Settlement, processing any inquiries or disputes,
6 and remitting payment of any funds to the Participating Class Members pursuant to the procedures
7 outlined herein ("Settlement Administration Costs"), which shall not exceed Ten Thousand Dollars
8 (\$10,000.00), will be paid from the MSA. Defendants will not be responsible for anything more than
9 the MSA, however, payment of employer's share of payroll taxes and other required withholdings,
10 based on Settlement Payment(s) to the Class Members shall be paid by the Defendants in addition to
11 the MSA. There will be no reversion of any funds to the Defendants.

12 **II. DEFINITIONS**

13 As used in this Stipulation and Settlement Agreement (hereinafter the "Agreement"), the
14 following terms shall have the meanings specified below:

15 1. "Action" means this lawsuit, and the operative Complaint in the matter entitled *Corey*
16 *Nursery, Inc.; DOES 1 through 10, DEFENDANTS*, Los Angeles County Superior Court Case No.
17 20STCV15892.

18 2. "Agreement" or "Settlement" means this Joint Stipulation and Class Settlement
19 Agreement, including any attached exhibits.

20 3. "Allocation Form" means the Court-approved Allocation Form, substantially in the
21 form of the Allocation Form attached as Exhibit 2 and incorporated by reference herein, which will
22 be mailed to Class Members only which advises them of their number of Workweeks and their
23 settlement share. The Class Members do not have to submit anything to receive their settlement share.

24 4. "Class," "Class Member," or "Class Members" means all current and former non-
25 exempt, hourly paid employees, including all field sales representatives, who worked for Defendant
26 in California at any time during the Class Period

27 5. "Class Counsel" means Justin Lo and Edward Kim of Work Lawyers, PC, 22939
28 Hawthorne Blvd. Ste. 202, Torrance, CA 90505.

1 6. “Class Counsel Costs” means the amounts to be paid, after Court approval, to Class
2 Counsel for costs incurred by Class Counsel in this Action.

3 7. “Class Counsel Fees” means the amount to be paid, after Court approval, to Class
4 Counsel for attorneys’ fees.

5 8. “Class Notice” or “Notice of Settlement” means the form to be prepared by the Parties
6 and sent to the Class Members, after the Court preliminarily approves the terms contained in the
7 Agreement informing them of the material terms of the Agreement, why they are receiving the notice,
8 and what their options are to object, or be excluded from the Settlement. The Class Notice is attached
9 hereto as Exhibit 1. This mailing shall also include the Allocation Form as defined herein.

10 9. “Class Notice Period” or “Notice Period” means a period of forty-five (45) calendar
11 days after the original date of the Settlement Administrator’s mailing of the Notice of Settlement.

12 10. “Class Period” means from April 24, 2016 up to and including the date of preliminary
13 approval of this Settlement.

14 11. “Complaint” or “Operative Complaint” means the Complaint filed on April 24, 2020
15 in this Action.

16 12. “Counsel for Defendant,” “Defense Counsel,” or “Defendant’s Counsel” means Alfred
17 J. Landegger, Esq., Marie D. Davis, Esq., and Evelyn Zarraga, Esq., of LANDEGGER RIVAS
18 VERANO & DAVIS, ALC, 15760 Ventura Blvd., Suite 1200, Encino, California 91436, Telephone
19 No.: (818) 986-7561; Facsimile No.: (818) 986-5147.

20 13. “Court” means the Los Angeles County Superior Court in which the Action is
21 currently pending, the Honorable Maren Nelson presiding, and located at Spring Street Courthouse,
22 312 North Spring St. Los Angeles, California 90012. Court shall also mean any other Court that
23 acquires proper jurisdiction of this Action.

24 14. “Distributable Amount,” “Net Settlement Amount,” or “NSA” means the amount that
25 is distributable to the Participating Class Members and PAGA Employees, and equals the MSA less
26 Class Counsel Fees, Class Counsel Costs, Enhancement Payment, LWDA Payment, and Settlement
27 Administration Costs.

28 15. “Effective Date” means the later of (a) the date of entry of Order granting final

1 approval of this Settlement, if no objection to the Settlement is filed, (b) the date on which the time
2 for all appeals from objections to the Settlement has expired, if one or more objections to the
3 Settlement are filed, and not withdrawn, and (c) if an appeal is taken, the date on which the appeal is
4 settled, withdrawn or dismissed, or any reviewing court issues a decision, the time for further appeal
5 has expired, and the trial court has regained jurisdiction.

6 16. "Enhancement Payment" means the payment in the amount of Five Thousand Dollars
7 (\$5,000.00) to Plaintiff, in addition to whatever payment he is otherwise entitled to as an Participating
8 Class Member.

9 17. "Final Approval Hearing" refers to the hearing during which the Parties will seek final
10 approval of this Agreement.

11 18. "Final Judgment" means the order entered by the Court pursuant to the terms set forth
12 in this Agreement finally and fully giving effect to the terms contained in this Agreement and
13 dismissing the Action with prejudice.

14 19. "Maximum Settlement Amount" or "MSA" means the total amount Five Hundred
15 Seventy-Five Thousand Dollars (\$575,000.00) to be paid by Defendant pursuant to the terms of this
16 Agreement.

17 20. "Notice Returns" means envelopes containing the Class Notice that were mailed by
18 the Settlement Administrator to Class Members but were undelivered and returned to the Settlement
19 Administrator by the United States Postal Service.

20 21. "Objection to Class Settlement" means any written objection to this Settlement by
21 Class Members who do not choose to be excluded from the Class that is served on the Settlement
22 Administrator within the Opt-Out Period.

23 22. "Opt-Out Period" or "Response Deadline" refers to the deadline of no later than forty-
24 five (45) calendar days after the original date of the Settlement Administrator's mailing of the Notice
25 of Settlement that any Class Member, who wishes to be excluded from the Settlement, submits a
26 Request for Exclusion.

27 23. "PAGA Employee" or "PAGA Employees" means all Class Members employed at
28 any time during the PAGA Period.

24. "PAGA Payment" means the amount of Ten Thousand Dollars (\$10,000.00) of the MSA to be allocated as civil penalties under the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), with 75% of this amount, Seven Thousand Five Hundred Dollars (\$7,500.00), to be paid to the LWDA in satisfaction of any claim for civil penalties that may be owed to that agency under the PAGA ("LWDA Payment"). The other 25%, or Two Thousand Five Hundred Dollars (\$2,500.00), will be distributed to the PAGA Employees on a pro-rata basis.

25. "PAGA Period" means the time period from August 1, 2018, through date upon which the Court grants Preliminary Approval of this Settlement.

26. "Participating Class Members" means those Class Members who do not timely file a valid Request for Exclusion with the Settlement Administrator provided under this Agreement.

27. "Personal Release" means Plaintiff's irrevocable and unconditional release, acquittal, and discharge, to the extent permitted by law, of the Released Persons and all persons and/or corporate entities acting by, through, under, or in concert with any of them, or any of them, from any and all complaints, claims, penalties, liabilities, obligations, promises, agreements, controversies, damages, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, including but not limited to claims arising from the California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e); the California Fair Employment and Housing Act (Cal. Govt. Code §12900 et seq.); the Americans with Disabilities Act; the Age Discrimination in Employment Act (29 U.S.C. §§621-633a); the Private Attorneys General Act of 2004; and claims of intentional infliction of emotional distress; defamation and/or libel, or any other damage to reputation claims; breach of implied contract or for claims of a breach of the covenant of good faith and fair dealing, as well as any other express or implied covenant; or any other statute or common law principle of similar effect, known or unknown, which the person giving this release now has, owns, or holds, or claims to have, own or hold, or which said person at any time heretofore had, owned, or held, or claimed to have, own, or hold or which said person at any time hereinafter may have, own, or hold, or claim to have, own, or hold, against each or any of the Released Persons, arising from acts, events, or circumstances occurring on or before the effective date of this Agreement.

As to the foregoing claims, Plaintiff expressly waives the benefits of California *Civil Code*

1 §1542. *Civil Code* §1542 provides:

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

8 The Personal Release is not intended to, nor do they cover, any claims that cannot be released
9 as a matter of law.

10 28. "Plaintiff" means Plaintiff JESSE UNRUH (and his representative(s), heir(s),
11 assign(s), and attorney(s)).

12 29. "Preliminary Approval Order" is the order preliminarily approving the settlement
13 terms contained in this Agreement.

14 30. "Preliminary Approval Date" is the date the Court grants preliminary approval of this
15 Settlement.

16 31. "Qualifying Workweeks" or "Workweeks" means the total workweeks each Class
17 Member worked during the Class Period.

18 32. "Redirected Notice" means a re-mailing of the Class Notice mailed by the Settlement
19 Administrator to a new or different address to a Class Member that was obtained by the Settlement
20 Administrator as a result of a Notice Return.

21 33. "Released Class Claims" means any and all claims, debts, liabilities, demands,
22 obligations, guarantees, costs, expenses, attorneys' fees, damages, or causes of action which relate to
23 any and all claims alleged or which could have been alleged based on the facts in the operative
24 Complaint filed by Plaintiff, both on his behalf and on behalf of the Participating Class Members in
25 this Action during the Class Period, including the date of preliminary approval of the Settlement under
26 any federal, state or local law, and shall specifically include but is not limited to claims for failure to
27 pay minimum wages, failure to pay overtime wages, meal period violation, rest period violation,
28 failure to provide accurate itemized wage statements, failure to timely pay final wages, failure to
failure to timely pay wages during employment, failure to properly maintain required employment records,
failure to reimburse for necessary business expense, unfair and unlawful business practices, violations

of California Labor Code §§ 201-204, 226, 226.7, 351, 510, 512, 1174, 1174.5, 1182.12, 1194, 1197, and 2802, Business and Professions Code § 17200, *et seq.*, the Industrial Welfare Commission Wage Orders (“IWC Wage Order”), and any other claims, including claims for statutory and/or civil penalties, pertaining to the Participating Class Members which were alleged or could have been alleged in the operative Complaint based upon the allegations and claims contained in the Operative Complaint. With respect to the PAGA Employees, the Released Claims also includes any and all claims for civil penalties under PAGA [Cal. Lab. Code §§ 2699, *et seq.*] that are based upon or arise from the factual allegations in the Operative Complaint and/or Notice to the LWDA, arising during and/or with respect to the PAGA Period, including violations of California Labor Code §§ 201-204, 226, 226.7, 351, 510, 512, 1174, 1174.5, 1182.12, 1194, 1197, and 2802, the Industrial Welfare Commission Wage Orders (“IWC Wage Order”), and including all attorneys’ fees and costs related thereto. In addition, as to any Participating In addition, as to any Participating Class Member who cashes the check representing their Settlement Payment, the signing and negotiation of that check shall serve as the Class Member’s consent to join the action for purposes of releasing claims arising under the Fair Labor Standards Act (“FLSA”) that are related to the claims stated in the Action, implicitly or explicitly, and, for such persons, “Released Class Claims” shall include all related claims arising under the FLSA. This release is limited in time to the Class Period covering the Participating Class Members who worked for the Released Persons in the State of California.

34. “Released Persons” means Defendant COREY NURSERY INC. and its respective agents, attorneys, insurers, past, present and future divisions, affiliates, DBAs (if any), predecessors, successors, shareholders, officers, directors, managers, managing agents, employees, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, owners, subsidiaries, privies, and/or any and all persons and/or corporate entities acting by, through, under or in concert with any of them.

35. “Request for Exclusion” or “Opt-Out” means a written request by a Class Member to be excluded from the Class and the Settlement containing all the information necessary as detailed herein.

36. “Settlement Administrator” refers to Phoenix Settlement Administrators, the entity

1 that Class Counsel and Counsel for Defendant selected to administer this Settlement and to act as the
2 Settlement Administrator to process the Settlement under the terms of this Agreement.

3 37. "Settlement Administration Costs" means the fees and costs incurred or charged by
4 the Settlement Administrator in connection with the execution of its duties under this Agreement
5 including: (a) using the data provided by Defendant to prepare the Allocation Form with the number
6 of Qualifying Workweeks for each Class Member as described above; (b) mailing the Notices defined
7 herein to Class Members; (c) tracking Requests for Exclusion and objections; (d) sending cure letters
8 to Class Members, and making follow-up telephone calls to Class Members; € notifying the Parties
9 of timely and untimely Requests for Exclusion, and objections received; (f) calculating the amounts
10 due to each Participating Class Member and PAGA Employee pursuant to the Settlement as described
11 herein; (g) notifying the Parties of, and helping to resolve, any disputes regarding claims by the Class
12 Members; (h) providing settlement payments, along with issuing requisite tax forms (e.g., IRS Form
13 1099, W-2, etc.), to the Participating Class Members and PAGA Employees and to the taxing
14 authorities; (i) utilizing the National Change of Address Database maintained by the United States
15 Postal Service, mail-forwarding information and/or skip tracing methods, as reasonable, to update the
16 mailing list, and taking steps to send Notice Packets to current mailing addresses; (j) submitting
17 payment of Defendant's portion of payroll taxes; (k) mailing of Final Approval Notice and (l)
18 performing such other duties as are described herein or as the Parties may request from time to time.

19 38. "Settlement Payment" or "Individual Settlement Payment" refers to the payment to
20 any Participating Class Member and/or PAGA Employee pursuant to the terms of this Agreement.

21 **III. BACKGROUND**

22 The original complaint in this Action was filed on April, 24 2020, in the Superior Court of the
23 State of California, County of Los Angeles. In his operative Complaint, Plaintiff asserts the following
24 claims: (1) Unpaid Minimum Wage and Overtime; (2) Meal Period Violations; (3) Rest Period
25 Violations; (4) Failure to Provide Accurate Itemized Wage Statements; (5) Failure to Pay Wages Due
26 at Separation of Employment; (6) Failure to Indemnify for Expenditures or Losses in Discharge of
27 Duties; (7) Unfair Business Practices (Business and Professional Code § 17200); and (8) Violations
28 of the Private Attorneys General Act (Cal. Lab. Code §§ 2699, *et seq.*) ("PAGA").

1 On January 23, 2020, Plaintiff Jesse Unruh sent a letter to the LWDA and Defendant giving
2 notice of his intent to pursue a representative action against Defendant pursuant to the PAGA, on
3 behalf of himself, the State of California, and on behalf of a proposed groups of aggrieved employees
4 (“Notice to the LWDA”). No response was received by Plaintiff or his counsel from the LWDA
5 within the statutory 65-day period.

6 Defendant denies each and every one of the allegations asserted in the operative Complaint
7 and asserts that it has no liability for the claims of Plaintiff or the Class.

8 The Parties have conducted a significant investigation of the facts and law during the
9 prosecution of this Action, which included informal discovery. The informal discovery included the
10 exchange of class information such as class size and composition, the production of Class Members’
11 time and payroll records, as well as Defendant’s written wage and hour policies and practices. The
12 Parties conducted the aforementioned investigation and discovery in anticipation of, and prior to, the
13 private mediation of the Action. Counsel for the Parties investigated the law as applied to the
14 discovered facts regarding the alleged claims of Plaintiff and the potential defenses thereto, and the
15 potential damages claimed by Plaintiff.

16 Thereafter, the Parties participated in a full day mediation on March 26, 2021 before
17 experienced and well-regarded mediator, Jeffrey Winikow, Esq (Ret). Unfortunately, no settlement
18 was reached that day. Through the efforts of all Parties and their counsel, as well as the invaluable
19 assistance of the mediator, the Parties were eventually able to reach a mutual understanding of the
20 material terms of settlement, which are memorialized in this Agreement.

21 Representative Plaintiff and Class Counsel concluded, after taking into account the sharply
22 disputed factual and legal issues involved in the Action, the risks and substantial expenses involved
23 in the further prosecution of this case, and the substantial benefits to be received pursuant to the
24 compromise and settlement of the Action at this early stage, as set forth in this Agreement, that
25 settlement on the terms set forth herein is in the best interest of Plaintiff and the Class, and is fair and
26 reasonable. In particular, Class Counsel and Plaintiff understand the risk of the class certification
27 process, as well as the potential merits of affirmative defenses expected to be raised by the Defendant.
28 In light of the risks related to certifying a class, prevailing on an anticipated motion for summary

1 judgment and a potential trial, the recovery of Five Hundred Seventy-Five Thousand Dollars
2 (\$575,000.00) obtained in the Action is both reasonable and fair.

3 Similarly, Defendant concluded that there are benefits associated with settling the Action at
4 this early stage. After taking into account the sharply disputed factual and legal issues involved in
5 the Action, the expense and burden of protracted litigation, and its desire to put the controversy to
6 rest, Defendant believes that settlement on the terms set forth in this Agreement is in its best interest
7 and is fair and reasonable. Defendant in particular has concluded that the future costs and expenses
8 involved in continuing the Action are substantial and chose to eliminate any further expenses,
9 attorneys' fees, and risks via the Settlement. In particular, given the severely disputed nature of the
10 case, it is expected that substantial expenses will be incurred determining many issues dealing with
11 discovery, a class certification motion, a Summary Judgment motion, eventual trial, and possible
12 appeals.

13 This Agreement contemplates (i) entry of an Order preliminarily approving the Settlement
14 and approving certification of a provisional settlement class, contingent upon final approval of the
15 Settlement; (ii) the mailing of a Notice of Settlement to all Class Members; (iii) the processing of any
16 objections, and opt-outs by the Settlement Administrator, as well as payment to the Class Members
17 after final approval of this Agreement by the Court; and (iv) entry of Final Judgment granting final
18 approval of the Settlement and terms contained therein, and dismissal of the Action with prejudice.

19 **IV. SETTLEMENT APPROVAL & IMPLEMENTATION PROCEDURE**

20 **A. Preliminary Approval of the Settlement**

21 As soon as practicable, Class Counsel will also submit this Agreement to the Court for its
22 preliminary approval. Such submission will include such motions, pleadings, and evidence as may
23 be required for the Court to determine that this Agreement is fair, adequate, and reasonable, as
24 required by section 382 of the California *Code of Civil Procedure*, Rule 3.769 of the California *Rules*
25 *of Court*, and California Labor Code section 2699. Such submission will also include a Notice of
26 Class Settlement and Allocation Form in substantially the form attached hereto as Exhibits 1 and 2,
27 respectively.

28 **B. Conditional Certification of the Class**

1 Defendant hereby consents, solely for purposes of the Settlement set forth in this Agreement,
2 to the conditional certification of the Class, to the conditional appointment of Class Counsel, and to
3 the conditional approval of Plaintiff, provided however, that if the Settlement fails to be approved or
4 otherwise fails to be consummated for any reason whatsoever, including but not limited to the Final
5 Judgment not becoming final, then Defendant retains all rights previously available to it, and any
6 provisional certification of any class, or the adoption of any procedure herein, shall be undone and
7 the Parties restored to their pre-settlement status as if no settlement had been reached and no decisions
8 were made pursuant to it. In that event, nothing in this Agreement or other papers or proceedings
9 related to the Settlement shall be used as evidence or argument by any party, including any Class
10 Members who opt out, concerning whether or not the claims advanced in the Complaint may properly
11 be maintained as a class action, whether the purported class is ascertainable, or whether Class Counsel
12 or Plaintiff can adequately represent the members of the class under applicable law.

13 **C. Cooperation**

14 The Parties agree to cooperate fully with each other to accomplish the terms and requirements
15 of this Agreement, including but not limited to, the execution of such documents and to take such
16 other action as may reasonably be necessary to implement the terms of this stipulated Settlement.

17 Except as otherwise provided herein, neither party nor any of their attorneys or agents shall
18 initiate any communication with any Class Members for the purpose of encouraging or discouraging
19 them to Opt-Out of the Class, or to object to the Settlement contained herein, unless agreed upon by
20 the other party in writing or if authorized by the Court. This provision in no way limits Class Counsel
21 from communicating with Plaintiff, nor does the provision limit Class Counsel from responding to
22 any inquiry initiated by any Class Members.

23 The Parties shall promptly submit this Agreement for preliminary approval and determination
24 by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this
25 Agreement, the Parties shall apply to the Court for the entry of a Preliminary Approval Order
26 scheduling a hearing to determine whether the proposed Class Settlement should be approved as fair,
27 reasonable, and adequate as to the Class Members, and approving as to form and content of the
28 proposed Notice of Settlement.

1 **D. Notice Of Settlement By Mail**

2 Defendant will provide as soon as practicable, but no later than ten (10) business days after
3 the Court grants preliminary approval of the Settlement, to the Settlement Administrator a list
4 containing the Class Members' names, last known addresses, total workweeks worked during the
5 Class Period, total workweeks worked during the PAGA Period, and social security number, which
6 will be used to send the Notice of Settlement, and Allocation Form to Class Members ("Class List").
7 Within ten calendar (10) days of receipt from Defendant of the Class List, the Settlement
8 Administrator shall mail the Notice of Settlement via First-Class mail using the United States Postal
9 Service to the most recent address known for each Class Member. Before mailing the Notice of
10 Settlement, the Settlement Administrator shall review the national change of address registry for all
11 Class Members and/or skip trace to determine the most up-to-date addresses of all Class Members.
12 If any Notices of Settlement are returned with a forwarding address, the Settlement Administrator
13 will re-mail the Notice of Settlement and Allocation Form to the Class Member whose notice was
14 returned.

15 In the event that prior to the final date for any Class Member to Opt-Out, any Notice mailed
16 to the Class Member is returned as having been undelivered by the U.S. Postal Service ("Notice
17 Return"), the Settlement Administrator shall, via skip-tracing, seek an address correction from such
18 Class Member(s), and send a Redirected Notice to the new or different address within seven (7)
19 calendar days if such address is found.

20 **E. Allocation Form**

21 The Settlement Administrator shall mail along with the Notice of Settlement the Allocation
22 Form as described above, to the Class Members in English and Spanish.

23 **F. Requests for Exclusion ("Opt-Outs")**

24 Any Class Member who wishes to be excluded from the Settlement must submit a Request
25 for Exclusion from the Settlement to the Settlement Administrator, no later than forty-five (45)
26 calendar days after the original date of the Settlement Administrator's mailing of the Class Notice of
27 Settlement (the "Opt-Out Period" or "Response Deadline"). Any Class Member who submits a valid
28 and timely request to be excluded from the Settlement shall no longer be a member of the Class, shall

1 be barred from participating in this Settlement, shall be barred from objecting to this Settlement, and
2 shall receive no benefit from this Settlement (except for PAGA Employees who retain a right to
3 receive a pro-rata share of the portion of the PAGA Payment allocated to the PAGA Employees).

4 The written request for exclusion must: (1) explicitly and unambiguously state the following
5 statement or similar statement: "I wish to exclude myself from the settlement reached in the matter
6 of *Unruh v. Corey Nursery, Inc.* I understand by excluding myself, I will not receive any money from
7 the settlement reached in this matter."; (2) contain the name (including any former names used during
8 employment with *Corey Nursery, Inc.*), address, and the last four digits of the Social Security number
9 of the person requesting exclusion; (3) be signed by the Class Member; and (4) be postmarked by the
10 Response Deadline and returned to the Settlement Administrator at the specified address. The request
11 for exclusion will not be valid if it is not timely submitted, if it is not signed by the Class Member, or
12 if it does not contain the name, and address of the Class Member. The date of the postmark on the
13 return mailing envelope on the request for exclusion shall be the exclusive means used to determine
14 whether the request for exclusion was timely submitted. Any Class Member who requests to be
15 excluded from the Settlement Class will not be entitled to any recovery under the Settlement and will
16 not be bound by the terms of the Settlement (other than as it applies to the PAGA claim with respect
17 to the PAGA Employees) or have any right to object, appeal, or comment thereon. Class Members
18 who fail to submit a valid and timely written request for exclusion by the Response Deadline shall be
19 bound by all terms of the Settlement and any final judgment entered in this Action if the Settlement
20 is approved by the Court, regardless of whether that Class Member receives and/or cashes his or her
21 Settlement Payment check.

22 Class Members who are also PAGA Employees submitting a Request for Exclusion will
23 nevertheless receive their pro-rata share of the 25% of the PAGA Payment allocated to the PAGA
24 Employees. If the Court approves the compromise of the PAGA claim, all PAGA Employees are
25 bound by the Court's resolution of that claim. Plaintiff shall serve a notice of settlement on the
26 California Labor and Workforce Development Agency at the same time Plaintiff files the motion for
27 preliminary approval.

28 **G. Declaration Of Compliance**

1 As soon as practicable, but no later than ten (10) calendar days following the Opt-Out-Period,
2 the Settlement Administrator shall provide Class Counsel and Counsel for Defendant with a
3 declaration attesting to completion of the notice process set forth in this Section (Section IV) of the
4 Agreement, including an explanation of efforts to resend undeliverable notices returned with
5 forwarding addresses, the average estimated Settlement Payment, the highest estimated Settlement
6 Payment, the lowest estimated Settlement Payment, the estimated Settlement Payment for Plaintiff,
7 and a summary of disputed claims, and opt outs including the name of the class members opting out,
8 which declaration shall be filed with the Court by Class Counsel along with their papers requesting
9 Final Approval of the Settlement.

10 **H. Sufficient Notice**

11 Compliance with the procedures described in this Section shall constitute due and sufficient
12 notice to Class Members of this Settlement and the final approval hearing, shall satisfy the
13 requirements of due process, and nothing else shall be required of Plaintiff, Class Counsel, Defendant,
14 Counsel for Defendant, or the Settlement Administrator to provide additional notice of the settlement
15 and the Final Approval Hearing, unless expressly ordered by the Court.

16 **I. Objections To Settlement**

17 Any Class Member wishing to object to the approval of this Settlement shall inform the Court
18 and Claims Administrator in writing of his or her intent to object by following the procedure set forth
19 in the Notice of Settlement within forty-five (45) calendar days of mailing of the Notice of Settlement
20 and Allocation Form.

21 To be valid, the notice of Objection must be signed by the Class Member and state: (1) the
22 full name of the Class Member (including any former names used during employment with Corey
23 Nursery Inc.); (2) the dates of employment of the Class Member; (3) the last four digits of the Class
24 Member's Social Security number and/or the Employee ID number; (4) the basis for the objection;
25 and (5) if the Class Member intends to appear at the Final Approval/Settlement Fairness Hearing. In
26 order to object to the Settlement, the Class Member must not have submitted a Request for Exclusion.
27 A Participating Class Member may still attend the Final Approval/Settlement Fairness Hearing and
28 ask to speak regarding his or her objection and may orally object at the hearing regardless of whether

1 they submitted a written objection. At no time shall any of the Parties or their counsel seek to solicit
2 or otherwise encourage Class Members to file or serve written objections to the Settlement or appeal
3 from the Order and Final Judgment. Class Counsel shall not represent any Class Members with
4 respect to any such objections.

5 As soon as practicable, the Settlement Administrator shall forward any and all Objections to
6 Class Settlement to Class Counsel and Defendant's Counsel. Class Counsel shall ensure that any
7 written objections are transmitted to the Court for the Court's review (either as an attachment to a
8 declaration from Class Counsel or as an attachment to a declaration from the Settlement
9 Administrator). The Court may, in its sole discretion, permit any Settlement Class Member to state
10 comments about the Settlement or objections to the Settlement at the Final Approval hearing,
11 regardless of whether the Settlement Class Member has submitted an Objection to Class Settlement.
12 Regardless of the form, an objection alone will not satisfy the requirement that a Settlement Class
13 Member must formally intervene and become a party of record in the action to appeal a Judgment
14 entered following an Order or Judgment finally approving this Settlement, as is required under the
15 California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018). A
16 Class Member who does not object prior to or at the Final Approval Hearing, will be deemed to have
17 waived any objections and will be foreclosed from making any objections (whether at the Final
18 Approval Hearing, by appeal, or otherwise) to the Settlement. If the objecting Class Member does
19 not formally intervene in the action and/or the Court rejects the Class Member's objection, the Class
20 Member will still be bound by the terms of this Agreement. Class Counsel and Defendant's Counsel
21 may, at least five days (or some other number of days as the Court shall specify) before the final
22 approval hearing, file responses to any Objections to Class Settlement received by the Settlement
23 Administrator.

24 In order to object to the Class Settlement, the Class Member must not have submitted a
25 Request for Exclusion.

26 If an Objection or dispute of the amount due to a Class Member and a Request for Exclusion
27 are received from the same Class Member, the Settlement Administrator shall attempt to resolve the
28 matter by contacting the Class Member by any reasonable means to determine the Class Member's

choice. If the Settlement Administrator fails to determine what the Class Member intends, the Opt-Out shall be null and void, and the Class Member will be counted as part of the Class and bound by the terms and conditions of the Settlement.

J. Final Approval Hearing

At the final approval hearing, Plaintiff, Defendant, Class Counsel, and Counsel for Defendant shall ask the Court to give final approval to this Agreement and the Settlement contained herein. At this hearing, the Court will consider and rule upon any Objections to Settlement submitted by any Class Member, whether timely or not. Upon granting final approval of the Settlement contained herein, the Court shall also enter a Final Judgment dismissing with prejudice all claims and implementing the Releases contained in this Agreement as to Plaintiff and all Participating Class Members and PAGA Employees. The Releases contained in this Agreement shall enter into effect concurrently with the issuance of the Final Approval order and/or Judgement.

K. Formulas to Determine Payment, Distribution of Funds and Payment of Funds

1. *General Terms of Settlement*

Defendants shall pay the MSA of Five Hundred Seventy-Five Thousand Dollars (\$575,000.00), to settle this Action, under the terms described in this Agreement. Defendants shall pay the MSA in one installment within 30 calendar days from the Effective Date.

From the MSA, Class Counsel will request, and Defendant will not oppose, One Hundred Ninety-One Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$191,666.67) as Class Counsel Fees, and up to Ten Thousand Dollars (\$10,000.00) for Class Counsel Costs. In addition, Class Counsel will request Five Thousand Dollars (\$5,000.00) as an Enhancement Payment for Plaintiff. Plaintiff will have to execute the Agreement to receive the Enhancement Payment. Under no circumstances will Defendant be required to pay more in Class Counsel Fees, Class Counsel Costs, and/or Enhancement Payment than specified in this Section. Class Counsel Fees, Class Counsel Costs, and the Enhancement Payment are subject to Court approval. The Court's ruling on the request for Class Counsel Fees, Class Counsel Costs, and Enhancement Payment shall not affect the enforceability of this Agreement or the terms contained herein. In the event the Court reduces the amount requested in Class Counsel Fees, Class Counsel Costs and/or Enhancement Payment(s), the

1 difference shall be added to the Distributable Amount to the Class Members.

2 In addition, the Parties have agreed that Ten Thousand Dollars (\$10,000) of the MSA will be
 3 allocated for PAGA penalties (as the PAGA Payment), with 75% of this amount Seven Thousand
 4 Five Hundred Dollars (\$7,500.00) to be paid to the LWDA in satisfaction of any claim for penalties
 5 that may be owed to that agency under PAGA (Cal. Labor Code 2699, *et seq.*) (the LWDA Payment),
 6 and the remaining 25%, or Two Thousand Five Hundred (\$2,500.00), to be distributed to the PAGA
 7 Employees on a pro-rata basis to the extent they were employed by Defendants during the PAGA
 8 Period. Under no circumstances will Defendant be required to pay more in PAGA Payment than
 9 specified in this Section.

10 Further, the Settlement Administration Costs, currently estimated at Ten Thousand Dollars
 11 (\$10,000.00) shall be made from the MSA. Any and all Settlement Administration Costs shall be
 12 made from the MSA. Any amounts not used by the Settlement Administrator for Settlement
 13 Administration shall be added to the Distributable Amount to the Class Members. Under no
 14 circumstances will Defendant be required to pay more in Settlement Administration Costs than
 15 specified in this Section.

16 Consequently, the amount from which the Class may be paid, also called the “Distributable
 17 Amount,” is estimated to be:

18	Maximum Settlement Amount	\$575,000.00
19	Class Counsel Fees	-\$191,666.67
20	Class Counsel Costs	-\$10,000.00
21	Enhancement Payment(s)	-\$5,000.00
22	Settlement Administrator Costs	-\$10,000.00
23	LWDA Payment (LWDA Portion)	-\$7,500.00
24	Distributable Amount	\$350,833.33

25
 26 No funds will revert to the Defendant from the MSA.

27 **2. Formula for Determining the Value of the Claims for the Class, including**
 28 **for Each Participating Class Member and PAGA Employee**

1 The Net Settlement Amount will be allocated to the Participating Class Members and PAGA
2 Employees. Each Participating Class Member's Settlement Payment shall include a pro-rata share of
3 the remainder of the Distributable Amount after deducting \$2,500.00 (the amount allocated for PAGA
4 penalties to PAGA Employees). Each Participating Class Member's pro-rata share shall be
5 determined by comparing the individual Participating Class Member's Qualifying Workweeks during
6 the Class Period to the total Qualifying Workweeks for all Participating Class Members during the
7 Class Period. The resulting percentage is the value of the individual Participating Class Member's
8 Class Claim.

9 The formula to calculate the "Individual Class Claim" payment amount for
10 a Participating Class Member is: (Individual Participating Class Member's
11 Qualifying Workweeks during the Class Period / Total Qualifying
12 Workweeks for all Participating Class Members during the Class Period) x
13 (Distributable Amount less the \$2,500.00 amount allocated for PAGA
14 penalties to PAGA Employees) = Value of Participating Class Member's
15 Individual Class Claim.

16 Individual Class Claim payments from the Distributable Amount shall be made only to
17 Participating Class Members, pursuant to the manner provided in this Agreement.

18 In addition, each Class Member who is a PAGA Employee will be paid a pro-rata share of
19 the \$2,500.00 amount allocated for PAGA penalties to PAGA Employees, as calculated by the
20 Settlement Administrator, with a formula similar to payments to Participating Class Members for
21 Individual Class Claims.

22 The formula to calculate the "Individual PAGA Claim" payment amount for
23 a PAGA Employee is: (Individual PAGA Employee's Qualifying
24 Workweeks during the PAGA Period / Total Qualifying Workweeks for all
25 PAGA Employees during the PAGA Period) x (\$2,500.00, the amount
26 allocated for PAGA penalties to PAGA Employees) = Value of PAGA
27 Employee's Individual PAGA Claim.

28 The Settlement Payment for a Participating Class Member who is also a PAGA Employee

will therefore include the Participating Class Member's Individual Class Claim payment amount and his or her Individual PAGA Claim payment amount.

Class Members who are PAGA Employees will not be permitted to exclude themselves from the PAGA claim portion of the Settlement. PAGA penalty settlement payments in the appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA Employees including to those Class Members who are PAGA Employees who submitted a Request for Exclusion.

Twenty percent (20%) of each Participating Class Member's Individual Class Claim settlement payment shall be considered wages and shall be subject to all applicable local, state and federal taxes and withholdings. Each Participating Class Member will receive from the Administrator (as defined in below) a W-2 for this portion of the payment and taxes that will be withheld at the rate required by law. Eighty percent (80%) of each Participating Class Member's Individual Class Claim settlement payment shall be considered interest and penalties. One hundred percent (100%) of each PAGA Employee's Individual PAGA Claim settlement payment shall be considered penalties. Each Class Member receiving a Settlement Payment will also receive from the Settlement Administrator an IRS Form 1099 for those portions of their Settlement Payment attributable to penalties and interest, and Class Members will be responsible for correctly characterizing this compensation for tax purposes and to pay any taxes owing.

Each Class Member receiving a Settlement Payment shall be responsible for correctly characterizing any compensation received under the Settlement on his/her personal income tax returns and paying any and all taxes due for any and all amounts paid to them under the Settlement. The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Payments. Any employer's share of taxes and contributions on the wages portion from the payment of any settlement funds to any Class Member pursuant to the terms of this Agreement shall not be made from the Distributable Amount. However, Defendant will only be responsible for employer side payroll taxes, separate and apart from the MSA.

3. Class Counsel Fees, Costs, Enhancement Payment, LWDA Payment, Settlement Administration Cost, and Payment of Maximum Settlement Amount Funds

1 Plaintiff and Class Counsel will request, and Defendant agree not to oppose, payment from
2 the Maximum Settlement Amount of Five Thousand Dollars (\$5,000.00) to Plaintiff as an
3 Enhancement Payment. Class Counsel believes, and Defendant do not challenge, that such award to
4 Plaintiff as an Enhancement Payment is reasonable. The Settlement Administrator will issue an IRS
5 Form 1099 to Plaintiff for the Enhancement Payment, and Plaintiff shall be solely and legally
6 responsible for correctly characterizing this compensation for tax purposes and for paying any taxes
7 on the amounts received.

8 Plaintiff and Class Counsel will request, and Defendant agrees not to oppose, the payment
9 from the MSA of One Hundred Ninety-One Thousand Six Hundred Sixty-Six Dollars and Sixty-
10 Seven Cents (\$191,666.67), representing 33.33% of the MSA, to Class Counsel for Class Counsel
11 Fees. Class Counsel believes, and Defendant does not challenge, that such an award to Class Counsel
12 is reasonable. Plaintiff and Class Counsel will request, and Defendants agrees not to oppose, a
13 payment from the MSA not to exceed Ten Thousand Dollars (\$10, 000.00) to Class Counsel for Class
14 Counsel Costs. Class Counsel believes, and Defendant does not challenge, that such an award to Class
15 Counsel is reasonable.

16 Class Counsel Fees, Class Counsel Costs and the Enhancement Payment, whether they are
17 awarded as requested or reduced by the Court at its discretion, shall be paid from the MSA.

18 The Parties have agreed that Ten Thousand Dollars (\$10,000) of the MSA will be allocated
19 as PAGA penalties, with 75% of this amount, Seven Thousand Five Hundred Dollars (\$7,500.00) to
20 be paid to the LWDA in satisfaction of any claim for penalties that may be owed to that agency under
21 PAGA. The other 25%, or Two Thousand Five Hundred Dollars (\$2,500.00), will be distributed to
22 the PAGA Employees on a pro-rata basis.

23 Moreover, all the Settlement Administration Costs shall be paid from the MSA, which the
24 Parties currently estimate will be about Ten Thousand Dollars (\$10,000.00).

25 Class Counsel shall timely provide a completed IRS Form W-9 no later than five (5) calendar
26 days after the Effective Date and any other information needed for the Settlement Administrator to
27 make payments. Any payment obligation by any party shall be tolled until the correct information is
28 provided as required by any party. Settlement Administration Costs may be paid earlier, if necessary,

1 to effectuate the terms of this Agreement, except that the party paying shall be entitled to offset the
2 costs from the Maximum Settlement Amount. Under no circumstances shall Defendant be required
3 to pay more than the Maximum Settlement Amount.

4 **4. Cure Provision**

5 If Defendant fails to timely make a payment set forth in this Agreement, Defendant shall have
6 fifteen (15) calendar days from the last day the payment is due to cure the untimely payment.
7 Defendant shall make any payment under this provision pursuant to the Settlement Administrator's
8 electronic transfer instructions. The Parties expressly agree that the Defendant's payment obligations
9 with respect to any cure shall be met upon initiating the electronic transfer of funds to the Settlement
10 Administrator, pursuant to its instructions.

11 **L. The Settlement Administrator**

12 Class Counsel and Defendants designate Phoenix Settlement Administrators, an experienced
13 Settlement Administrator, to process this Settlement. The Settlement Administrator will administer
14 the Settlement including, but not limited to, distributing the Class Notice of Settlement and Allocation
15 Form, calculating and directing the disbursements for payments from the Distributable Amount, and
16 handling inquiries about the calculation of individual settlement payments to the Class pursuant to
17 the terms contained in this Agreement. The Settlement Administrator shall establish a settlement
18 payment center address, telephone number, and timely process Class Members' inquiries about the
19 Class Notice of Settlement, Requests for Exclusion and Objections, and process the payments to the
20 Class under the terms of this Agreement.

21 Moreover, the Settlement Administrator shall provide as soon as possible to Defendant's
22 Counsel instructions for Defendant to tender the MSA payment by electronic transfer to the
23 Settlement Administrator. Defendant's payment of the MSA is contingent upon receipt of the
24 payment instructions. Defendant expressly agrees to follow the Settlement Administrator's payment
25 instructions. The Parties agree that Defendant's payment obligations under the Settlement shall be
26 met upon initiating the electronic transfer of funds to the Settlement Administrator, pursuant to its
27 instructions.

28 The Settlement Administrator shall provide the parties with weekly reports commencing with

1 the date the Class Notice is first mailed and continuing to the Effective Date notifying the Parties of
2 Notices mailed, Notices returned to sender, Notices re-mailed and the number of valid Opt-Outs
3 submitted by Class Members, if any, the number of Objections and identity of Objectors, if any and
4 the amounts of all Settlement Payments due and payable.

5 The Settlement Administrator shall not disburse the settlement funds except as provided
6 herein, as ordered by the Court, or as agreed upon, in writing, by Defendant's Counsel and Class
7 Counsel. Subject to further orders and/or directions as may be made by the Court, the Settlement
8 Administrator is authorized to execute such transactions on behalf of the Class Members as are
9 consistent with the terms of this Agreement.

10 Moreover, the Parties expressly agree that, in the event Phoenix Settlement Administrator.
11 cannot perform the functions herein within the allocated \$10,000.00 Settlement Administration Costs,
12 they will cooperate with each other to select a new, mutually agreed upon Settlement Administrator.
13 Under no circumstances shall Defendant be required to pay more than the Settlement Administration
14 Costs.

15 **M. Time For Disbursement**

16 Within ten calendar (10) days of receipt of Defendant's payment of the MSA, the Settlement
17 Administrator shall cause to be paid: (1) Settlement Payments from the Distributable Amount due to
18 Class Members who did not timely file valid Opt-Outs and PAGA Employees as provided under this
19 Agreement; (2) Class Counsel Fees; (3) Class Counsel Costs; (4) Enhancement Payment; (5)
20 Settlement Administration Costs; and (6) LWDA Payment.

21 Payment to any Participating Class Member and/or PAGA Employee will be in the form a
22 check issued for an amount calculated using the formulas contained in this Agreement. Any funds
23 for Individual Class Claims not paid to those Class Members who submitted timely valid Opt-Outs
24 shall be proportionally redistributed to Participating Class Members based on the number of their
25 Qualifying Workweeks (based on the formula provided under this Agreement).

26 Class Members who are PAGA Employees will not be permitted to exclude
27 themselves from the PAGA claim portion of the Settlement and will bound by the Court's resolution
28 of that claim regardless of whether they submit a Request for Exclusion. Class Members who do not

timely Opt-Out will be bound by all the terms of this Agreement, regardless of whether that Class Member receives and cashes his or her check for Settlement Payment. Any checks issued by the Settlement Administrator to Participating Class Members and PAGA Employees will be negotiable for one-hundred twenty (180) calendar days.

Any settlement checks remaining un-cashed after one hundred and eighty (180) calendar days after being issued shall become null and void, and any monies remaining in the distribution account shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq., for the benefit of those Settlement Class members who did not cash their checks until such time that they claim their property.

N. Taxes

1. *Withholding and Reporting Requirements*

The Settlement Administrator shall be responsible for ensuring that all taxes associated with the Agreement are timely paid to the appropriate tax authorities. The Settlement Administrator's responsibilities include the following: (i) filing all federal, state, and local tax deduction, (ii) to timely and proper filing of all required federal, state, and local forms (e.g., 1099s, W-2s, etc.) with the appropriate taxing authorities, and (iii) completion of any other steps necessary for compliance with any tax obligations of the Settlement under federal, state, and/or local law, as applicable. To verify the Settlement Administrator's compliance with the foregoing withholding and reporting requirements, as soon as administratively practicable, the Settlement Administrator shall furnish Class Counsel and Counsel for Defendant with copies of all forms detailing the payment of taxes (including all 1099 forms and returns) sufficient to prove that such payments were properly remitted. The Settlement Administrator shall provide a final accounting declaration adequate to demonstrate full compliance with all duties set forth in this Agreement, including but not limited to tax withholding, payment, and reporting obligations.

2. *Determination and Payment of Taxes*

The Settlement Administrator shall determine the amount of any withholding or taxes to be withheld from each Participating Class Member's settlement payment and issue form W-2's to the

1 Participating Class Members. All such withholdings shall be remitted by the Settlement
2 Administrator to the proper governmental taxing authorities. Participating Class Members and PAGA
3 Employees shall be responsible for any tax consequences of any funds paid out to each of them
4 pursuant to this Agreement.

5 **O. Circular 230 Disclaimer**

6 Each party to this Agreement (for purposes of this section, the “Acknowledging Party”; and
7 each party to this Agreement other than the Acknowledging Party, an “Other Party”) acknowledges
8 and agrees that (1) no provision of this Agreement, and no written communication or disclosure
9 between or among the parties or their attorneys and other advisers, is or was intended to be, nor shall
10 any such communication or disclosure constitute or be construed or be relied upon as, tax advice
11 within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended);
12 (2) the Acknowledging Party (a) has relied exclusively upon his, her, or its own, independent legal
13 and tax advisers for advice (including tax advice) in connection with this Agreement, (b) has not
14 entered into this Agreement based upon the recommendation of any other party or any attorney or
15 advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by
16 any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the
17 Acknowledging Party; and (3) no attorney or adviser to any other party has imposed any limitation
18 that protects the confidentiality of any such attorney’s or adviser’s tax strategies (regardless of
19 whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax
20 treatment or tax structure of any transaction, including any transaction contemplated by this
21 Agreement.

22 **V. LIMITATIONS ON USE OF THIS SETTLEMENT**

23 **A. No Admission**

24 Neither the acceptance nor the performance by Defendant of the terms contained in this
25 Agreement nor any of the related negotiations or proceedings is or shall be claimed to be, construed
26 as, or deemed a precedent or an admission by Defendant of the truth of any allegations in any version
27 of the Complaint. Defendant enters into this Settlement Agreement solely for the purposes of
28 compromising and settling the Action.

1 **B. Non-Evidentiary Use**

2 Neither this Agreement nor any of its terms, nor any statements or conduct in the negotiation
3 or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member (including any
4 individual who filed an Opt-Out), Defendant, or its or their respective counsel, in the Action or any
5 other proceeding, except as is reasonably necessary to effectuate its purpose and terms. This
6 Agreement may be used by Defendant and/or the Released Persons to prove or defend against any
7 claim released herein by any Class Member in any judicial, quasi-judicial, administrative, or
8 governmental proceeding.

9 **C. No Publicity**

10 Plaintiff and Class Counsel agree not to disclose or publicize the Settlement, including the
11 fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any
12 manner or form, directly or indirectly, to any person or entity, except as may be strictly required to
13 effectuate the terms of the Settlement. For the avoidance of doubt, this section means Plaintiff and
14 Class Counsel agree not to issue press releases, communicate with, or respond to any media or
15 publication entities, publish information in manner or form, whether printed or electronic, on any
16 medium or otherwise communicate, whether by print, video, recording or any other medium, with
17 any person or entity, including the general public, concerning the Settlement, its terms or contents
18 and the negotiations underlying the Settlement, or identify Defendant or its principals owners as
19 associated with the underlying lawsuit, except as shall be contractually required to effectuate the
20 terms of the Settlement. However, for the limited purpose of allowing Class Counsel to prove
21 adequacy as class counsel in other actions for purposes of seeking approval of an unrelated settlement,
22 Class Counsel may refer to any information in the public record for such purposes.

23 **D. Nullification**

24 If the Court for any reason does not approve this Settlement, this Agreement shall be
25 considered null and void and all parties to this Settlement shall stand in the same position, without
26 prejudice, as if the Settlement had been neither entered into nor filed with the Court. Moreover, in the
27 event the Court does not approve this Settlement, Defendant will not be deemed to have waived,
28 limited, or affected in any way any of its objections, or defenses in this Action. Invalidation of any

1 material portion of this Settlement shall invalidate this Settlement in its entirety unless the Parties
2 agree in writing that the remaining provisions shall remain in full force and effect.

3 **E. Right to Withdraw**

4 Notwithstanding any other provision contained in this Agreement, if more than Ten Percent
5 (10%) of the Class Members submit timely and valid Requests for Exclusion from the Settlement
6 during the Opt-Out Period outlined herein, Defendant shall have the option but not the obligation, in
7 its sole discretion, to withdraw from this Agreement (“Right to Withdraw”), whereupon the
8 Agreement shall be null and void for any and all purposes and may not be used or introduced in the
9 Action or any other proceeding. The Parties will be restored to their respective positions in the
10 litigation as if this Agreement was never negotiated, drafted or agreed upon. However, if Defendant
11 exercises its Right to Withdraw, Defendant will be responsible for all Settlement Administration
12 Costs incurred up to the date when the Defendant exercises its Right to Withdraw. The Settlement
13 Administrator shall notify Class Counsel and Counsel for Defendant of the number of timely opt-outs
14 within five (5) calendar days after the period to file an Opt-Out has expired. If Defendant elects to
15 exercise its Right to Withdraw under this provision, Defendant will so notify Class Counsel and the
16 Court no later than five (5) calendar days after receiving notice of the number of opt-outs and/or value
17 of the valid claims made by the Participating Class Members.

18 **F. No Effect on Employee Benefits**

19 Amounts paid to Plaintiff or other Class Members pursuant to this Settlement Agreement shall
20 not be deemed pensionable earnings or have any effect on the eligibility for, or calculation of, any
21 employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of Plaintiff or Class Members.

22 **VI. RELEASE OF THE CLASS**

23 It is the desire of Plaintiff, Class Members, and Defendant to fully, finally, and forever settle,
24 compromise, and discharge disputes and claims arising from or related to this Action. Upon full
25 funding of the MSA and Final Approval by the Court of this Agreement, and by operation of the
26 Agreement’s terms, and except as to such rights or claims as may be created by this Agreement, all
27 Participating Class Members fully release and discharge the Released Persons from all Released Class
28 Claims, whether known or unknown during the Class Period. As to any Participating Class Member

1 who cashes the check representing their Settlement Payment, the signing and negotiation of that check
2 shall serve as the Class Member's consent to join the action for purposes of releasing claims arising
3 under the FLSA that are related to the claims stated in the Action, implicitly or explicitly, and, for
4 such persons, "Released Claims" shall include all related claims arising under the FLSA. All PAGA
5 Employees, whether requesting exclusion from the Settlement or not, fully release and discharge the
6 Released Persons from any and all claims for civil Penalties under PAGA [Cal. Lab. Code §§ 2699,
7 et seq.] that are based upon or arise from the factual allegations in the Operative Complaint and/or
8 Notice to the LWDA, arising during and/or with respect to the PAGA Period, including all attorneys'
9 fees and costs related thereto. Plaintiff and Defendant stipulate and agree that the consideration paid
10 to the Class Members pursuant to this Agreement compensates the Class Members for all wages and
11 penalties due to them arising from the claims alleged in the operative Complaint.

12 **VII. MISCELLANEOUS PROVISIONS**

13 **A. Amendments**

14 The terms and provisions of this Agreement may be amended only by a written agreement,
15 which is signed by Plaintiff, Class Counsel, Defendant, and Counsel for Defendant.

16 **B. Jurisdiction of the Court to Enforce Terms of Agreement**

17 The Parties stipulate and agree that the Court will retain jurisdiction to enforce the terms of
18 this Agreement following the entry of the Judgment pursuant to *California Code of Civil Procedure*
19 section 664.6. The Parties agree to the exclusive jurisdiction of the Court to enforce the terms and
20 conditions contained herein.

21 **C. Enforcement Actions**

22 In the event one or more of the Parties to this Stipulation institutes and legal action or other
23 proceeding against any other party or parties to enforce the provisions of this Stipulation, or to declare
24 rights and/or obligations under this Stipulation, the prevailing party or parties shall be entitled to
25 recover from the unsuccessful party or parties' reasonable attorneys' fees and costs in connection
26 with any enforcement actions.

27 **D. No Inducements**

28 Plaintiff and Defendant acknowledge that they are entering into this Agreement as a free and

1 voluntary act without duress or undue pressure or influence of any kind or nature whatsoever and that
2 neither Plaintiff nor Defendant have relied on any promises, representations, or warranties regarding
3 the subject matter hereof other than as set forth in this Agreement.

4 **E. No Prior Assignment**

5 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
6 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
7 entity any portion of any liability, claim, demand, action, cause of action or rights herein released and
8 discharged except as set forth herein. If any claims are made by any Class Member between the start
9 of the Class Period and the date in which the Court approves the Settlement outlined in this Agreement
10 as final, such a claim will be deemed covered and released by the individual Class Member making
11 the claim unless such Class Member has timely exercised the right to be excluded from this
12 Agreement under the terms set forth herein. Any Class Member covered by this Agreement will be
13 barred from proceeding with any such claim.

14 **F. Representative Plaintiff's Personal Release**

15 As part of the Agreement, Plaintiff grants the Released Persons the Personal Release, as that
16 term is defined in Section II herein.

17 **G. Destruction of Informal Discovery**

18 The Parties agree that in the event the Court does not approve the Settlement for any reason,
19 or if the Settlement cannot be consummated for any reason, Class Counsel expressly agrees to either:
20 (1) return all informally produced discovery by Defendant to Defendant's Counsel; or (2)
21 immediately destroy all informal discovery, and provide sufficient proof (such as a declaration under
22 oath by Class Counsel) that the information was destroyed within 10 calendar days after becoming
23 aware that the Settlement has failed to become final. Retaining any copy of direct or derivative
24 information shall be a violation of this provision. Such informal discovery shall include, but is not
25 limited to: (1) Class Members' time and payroll records; (2) written policies and procedures; and (3)
26 information disclosed pursuant to the mediation and/or settlement privilege. If Class Counsel fails to
27 either destroy or return such information within a reasonable time, the Parties expressly agree that
28 Defendant's Counsel may apply to the Court to seek enforcement of this specific provision (including

any and all reasonable attorney's fees and costs in seeking such enforcement).

If the Court approves the settlement, Plaintiff and Class Counsel agree to maintain the information provided by Defendant only for as long as it is necessary to consummate and finalize the approval process of the Settlement by the Court, up to and including the Effective Date. After such time, the Parties agree that Class Counsel will return the information to Defendant or Defendant's Counsel, or destroy the information (including any derivative information) as provided herein, except as provided in Plaintiff's personnel file.

Plaintiff and Class Counsel agree to treat and maintain the information disclosed confidentially, protect it, and take any and all reasonable steps to maintain it confidentially and treat it as a trade secret. However, the Parties expressly agree that Class Counsel may disclose such information to the Court as is necessary to consummate and finalize the approval process of the Settlement by the Court.

H. Counterparts

This Agreement, and any amendments hereto, may be executed in any number of counterparts, or signed electronically, each of which when executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument. This Agreement will become effective on the date when the last person signs and dates it.

I. Integration Clause

This document, along with any exhibits attached hereto, constitutes the complete and entire Agreement between the parties pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions of their Agreement. Any and all prior agreements, representations, negotiations, and understandings between the parties, oral or written, express or implied, are hereby superseded and merged herein.

IN WITNESS WHEREOF, the parties hereto execute this Agreement and have caused this Agreement to be executed by their duly authorized representatives.

[SIGNATURES ON FOLLOWING PAGE]

PLAINTIFF &
CLASS REPRESENTATIVE

8/6/2021
Date: _____

DocuSigned by:

Jesse Unruh

45D09ADA1C72454

JESSE UNRUH
Personally and as Representative Plaintiff

COREY NURSERY, INC.

7/25/21
Date: _____

Jeffrey Corey
Its Authorized Representative.

APPROVED AS TO FORM AND CONTENT

WORK LAWYERS PC

7/26/2021
Date: _____

DocuSigned by:

Justin Lo

06741113683F460

Justin Lo, Esq.
Attorneys for Plaintiff and the Proposed Class

LANDEGGER RIVAS VERANO & DAVIS, ALC

7/26/2021
Date: _____

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