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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

JULIAN CORTEZ, individually and as a
private attorney general;

Plaintiff,

vs.

M.S. LANDSCAPE & GARDEN, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 20STCV24030

Hon. Malcolm Mackey
Dept. 55

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR ORDER
APPROVING SETTLEMENT PURSUANT
TO CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS' GENERAL ACT
AND ENTERING JUDGMENT**

*[Filed concurrently with Motion for Order
Approving Settlement Pursuant to California
Labor Code Private Attorneys' General Act and
Entering Judgment and Declaration of Cody
Payne]*

Hearing Date: February 25, 2021

Hearing Time: 8:30 a.m.

Department: 55

Complaint Filed: June 25, 2020
Trial: None Set

RESID: 263801958861

~~PROPOSED~~ ORDER

Having reviewed and considered Plaintiff's Motion for Order Approving Settlement Pursuant to California Labor Code Private Attorneys' General Act and Entering Judgment, and good cause appearing for the same, it is hereby ORDERED, ADJUDGED, and DECREED:

1. Final judgment is hereby entered in conformity with the Settlement. All terms used herein shall have the same meaning as defined in the Settlement Agreement.
2. The Court HEREBY APPROVES AND CONFIRMS the civil penalties and release of claims provided for in the Parties' California Private Attorneys' General Act Settlement & Release Agreement ("PAGA Settlement Agreement"), attached as Exhibit B to the Declaration of Cody Payne.
3. Defendant M. S. Landscape and Garden Service, Inc. is hereby ORDERED to pay a total Gross Settlement Amount of Sixty Thousand Dollars and No Cents (\$60,000.00) in two (2) installment payments as follows:
 - a. Within six months (6) after Notice of the Approval, Defendant shall pay Forty Thousand Dollars and No Cents (\$40,000.00) ("The First Installment Payment") and six months thereafter, Defendant shall pay the balance of Twenty Thousand Dollars and No Cents (\$20,000.00) ("The Last Installment Payment"), to be allocated by PSA as follows:
 1. Nineteen Thousand One Hundred Seventy-Five Dollars and No Cents (\$19,175.00) (the "PAGA Settlement Sum"), on account of disputed and alleged civil penalties as follows:
 - a. By check made payable to the "Labor and Workforce Development Agency" in the amount of Fourteen Thousand Three Hundred Eighty One Dollars and Twenty Five Cents (\$14,381.25), which amount represents 75% of the total PAGA Settlement Sum, addressed to the Department of Industrial Relations, Accounting Unit, 455 Golden Gate Avenue, 10th Floor, San Francisco, CA 94102; and

1 b. The amount of Four Thousand Seven Hundred Ninety
2 Three Dollars and Seventy Five Cents (\$4,793.75), which
3 amount represents 25% of the total PAGA Settlement
4 Sum, which shall be distributed to all Aggrieved
5 Employees on a prorata basis determined by the number
6 of pay periods (whether partial or complete) each such
7 Aggrieved Employee worked for Defendant during the
8 PAGA Covered Period. All checks to Aggrieved
9 Employees will be sent by Defendant to each Aggrieved
10 Employee's last known address on file with Defendant
11 and shall remain valid and negotiable for 180 days from
12 the date of their issuance to Aggrieved Employees. If any
13 checks are returned as undeliverable, Defendant shall
14 make reasonable efforts to obtain an updated address and
15 reissue a check to that Aggrieved Employee. If any checks
16 are not cashed within 180 days of mailing, will be sent to
17 the Controller of the State of California to be held pursuant
18 to the Unclaimed Property Law, California Civil Code
19 Section 1500, et seq. in the name of the Settlement Class
20 Member to whom the uncashed check was addressed, for
21 the benefit of those Aggrieved Employees who did not
22 cash their checks until such time as they claim their
property; and

23 2. Nineteen Thousand One Hundred Seventy-Five Dollars and No
24 Cents (\$19,175.00) ("Individual Settlement Amount") to Plaintiff
25 Julian Cortez from the Settlement Fund as follows:

26 a. Five Thousand Dollars and No Cents (\$5,000.00) as final
27 and complete compensation for all alleged California
28 Labor Code Violations, wages owed, benefits, penalties,

1 and associated damages or claims against Defendant, its
2 attorney, agents, employees, and affiliates and assigns
3 paid on a payroll check less applicable taxes, withholding,
4 and deductions on a W2 upon Plaintiff's timely submittal
5 of a valid W-4 to Defendant's attorney.

6 b. Fourteen Thousand One Hundred Seventy Five Dollars
7 and No Cents (\$14,175.00) as final and complete
8 satisfaction and compensation for participation in the
9 Action, emotional distress, and general release of all
10 claims known and unknown against Defendant, its
11 attorney, agents, employees, and affiliates and assigns to
12 be reported by Defendant on IRS form 1099 upon
13 Plaintiff's timely submittal of a valid W-9 to Defendant's
14 attorney.

15 3. Twenty Thousand Dollars and No Cents (\$20,000.00) to
16 Plaintiff's Counsel, Payne Nguyen, LLP, in one check of which
17 Eighteen Thousand Eight Hundred Dollars and No Cents
18 (\$18,800.00) is for attorneys' fees ("Attorneys' Fees"), which is
19 slightly over thirty-one percent (31%) of the common fund, One
20 Thousand Two Hundred Dollars and No Cents (\$1,200.00)
21 ("Plaintiff's Counsel's Costs") is for costs, as final payment for
22 and complete satisfaction of any and all attorneys' fees and costs
23 incurred by and/or owed to Plaintiff's Counsel related to the
24 Action to be reported by Defendant on IRS form 1099 once
25 Plaintiff's Counsel submits a signed W-9 to Defendant's attorney;
26 4. One Thousand Six Hundred Fifty Dollars and No Cents (\$1,650)
27 as payment to Phoenix Settlement Administrators, the settlement
28 administrator to administer the settlement.

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- 3 4. This Court shall retain jurisdiction to enforce the terms of the PAGA Settlement
- 4 Agreement pursuant to California Code of Civil Procedure Section 664.6.
- 5 5. Plaintiff, Aggrieved Employees, and the State of California are hereinafter BARRED
- 6 and ENJOINED from instituting or prosecuting, either directly or indirectly,
- 7 individually, collectively, and/or representatively, any and all claims for civil
- 8 penalties pursuant to California Labor Code Section 2698 *et. seq.* arising from, or
- 9 related to, the same set of operative facts alleged in the Action asserted, or could
- 10 have been asserted based on the facts alleged in the Action, including based on
- 11 penalties pursuant to California's Private Attorney General Act (Labor Code Sec
- 12 2698, *et seq.*) arising out of the same, whether known or unknown, suspected or
- 13 unsuspected, concealed or hidden, that were alleged in this Action and/or the PAGA
- 14 Notice, or that could have been alleged in this Action and/or PAGA Notice, which
- 15 Plaintiffs and any Aggrieved Employee have or had at any time through and
- 16 including date of this Judgment, against any of the Releasees identified in the
- 17 Settlement Agreement. The Settlement Agreement may be pleaded by any Releasee
- 18 as a full and complete defense to, and may be used as the basis for an injunction
- 19 against, any action, suit or other proceeding that has been or may be instituted,
- 20 prosecuted or attempted by Plaintiffs, Aggrieved Employees, or the LWDA asserting
- 21 any PAGA Claim.
- 22 6. The Parties shall BEAR their own costs and fees.
- 23 7. Also, by virtue of this Judgment, Plaintiff has released, in addition to the Released
- 24 Claims described above, all claims, whether known or unknown, under federal or
- 25 state law, against the Released Parties. Plaintiff understands that this release includes
- 26 unknown claims and that she is, as a result, waiving all rights and benefits afforded
- 27 by Section 1542 of the California Civil Code, which provides: "A general release
- 28 does not extend to claims which the creditor does not know or suspect to exist in his

1 or her favor at the time of executing the release, which if known by him or her must
2 have materially affected his or her settlement with the debtor.”

3 8. The Court finds that Plaintiff gave notice to the California Labor Workforce and
4 Development Agency (“LWDA”) and to Defendants of her intention to pursue
5 claims for civil penalties under PAGA arising out of the facts and legal theories
6 alleged in the First Amended Complaint, that the LWDA did not give notice that it
7 intended to investigate these claims within 65 days of receiving Plaintiff notice, and
8 that Plaintiff is therefore authorized to pursue these claims on behalf of the LWDA.
9 The Court further finds that Plaintiff gave notice of this proposed settlement of those
10 claims under PAGA to the LWDA in accordance with Labor Code section
11 2699(1)(2), and that the LWDA has not expressed any objection to the proposed
12 settlement. Accordingly, this Judgment also bars the LWDA, or any other agency of
13 the State of California, or any person acting on its behalf, from collecting any
14 penalties due to any of them, or any unpaid wages due to Aggrieved Employees, to
15 the extent those penalties or unpaid wages arise out of the Released Claims or the
16 facts giving rise to those claims. *Arias v. Super. Ct.*, 46 Cal.4th 969, 985-986 (2009).

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18 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

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20 DATED: 02/25/2021, 2021



21 *Malcolm Mackey*

22 JUDGE OF THE SUPERIOR COURT

23 Malcolm Mackey / Judge
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