

**CALIFORNIA PRIVATE ATTORNEYS' GENERAL ACT SETTLEMENT & RELEASE
AGREEMENT**

This California Private Attorneys' General Act Settlement & Release Agreement (the "PAGA Agreement") is entered into by Julian Cortez ("Plaintiff") and M.S. Landscape & Garden, Inc. ("Defendant") (collectively, the "Parties"), and is made with knowledge of the facts as set forth below:

FACTUAL RECITALS

WHEREAS, on or about April 20, 2020, Plaintiff filed a letter with the Labor and Workforce Development Agency ("LWDA") and provided a copy to Defendant via certified mail alleging (1) overtime violations; (2) minimum wage violations; (3) meal period violations; (4) rest period violations; (5) pay check stub violations; (6) record keeping violations; (7) timing of payment during employment violations; and (8) timing of final payment upon termination.

WHEREAS, on or about June 25, 2020, Plaintiff filed a Complaint in the California Superior Court for the County of Los Angeles (the "Court") entitled *Cortez v. M.S. Landscape & Garden, Inc., et al.*, Case No. 20STCV24030 (the "Action"). The Action was brought on an individual basis as to Plaintiff and as a private attorney general alleging the following causes of action: (1) Unpaid Overtime; (2) Unpaid Minimum Wages; (3) Unpaid Rest Period Premiums; (4) Unpaid Meal Period Premiums; (5) Failure to Provide Accurate Wage Statements; (6) Final Wages Not Timely Paid; (7) Failure to Reimburse Expenses; (8) Unfair Business Practices Pursuant to Business and Professions Code Section 17200, Et Seq.; (9) Failure to Provide Personnel Records; (10) Private Attorney General Act, Labor Code Section 2698 Et. Seq.;

WHEREAS, the Parties engaged in informal settlement discussions;

WHEREAS, Defendant provided informal discovery including a sampling of wage statements, total number of Aggrieved Employees, and total wages earned by Aggrieved Employees;

WHEREAS, the Parties agree that this PAGA Agreement sets forth the terms and conditions of the resolution of Plaintiff's and Aggrieved Employees' "PAGA Claims," as defined in paragraph 5 below of this PAGA Agreement, the resolution of which shall be referred to as the "PAGA Settlement." All of Plaintiff's claims, other than his PAGA Claims, are expressly excluded from this PAGA Agreement and, instead, are subject to the Parties' separate and concurrently executed Settlement and General Release Agreement of Plaintiff's Individual Claims (the "Individual Settlement Agreement").

WHEREAS, Plaintiff unconditionally has received all wages, salary, commissions, bonuses, expenses, and benefits to which Plaintiff was lawfully entitled arising from Plaintiff's employment with Defendant. Accordingly, Plaintiff acknowledges and agrees that no additional earned wages, salary, commissions, bonuses, expenses, penalties, damages, or benefits are due or owing to Plaintiff for any period of Plaintiff's employment with Defendant, and that, upon the receipt of any wages and payments due under the Parties' separate Settlement and General Release Agreement of Plaintiff's Individual Claims, Plaintiff affirms there are no facts or circumstances indicating that Plaintiff has or may have any outstanding claim for unpaid wages, penalties, or damages. Consequently, California Labor Code Section 206.5 is not applicable to the resolution of this matter by the Parties hereto. Section 206.5 provides, in pertinent part, as follows: An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee. Violation of this section by the employer is a misdemeanor.

WHEREAS, Defendant has not made any representation to Plaintiff regarding the legal or tax consequences of any funds received pursuant to this PAGA Agreement.

WHEREAS, the "PAGA Covered Period" is defined to be the period from April 20, 2019 through the date of Court Approval.

WHEREAS, the Parties hereto desire to resolve Plaintiff's and the Aggrieved Employees' PAGA Claims, without the further expenditure of time or expense of litigation and, for that reason, have entered into this PAGA Agreement. This PAGA Agreement is a full release and settlement of all of Plaintiff's and of all Aggrieved Employees' PAGA Claims as asserted by Plaintiff, or which could have been asserted by Plaintiff, as defined in this PAGA Agreement.

WHEREAS, while this PAGA Agreement resolves all PAGA Claims between the Parties and the Aggrieved Employees, as well as any future effects of any acts or omissions regarding Plaintiff's and the Aggrieved Employees' PAGA Claims, it does not constitute an admission by Defendant of any violation of federal, state, or local law, ordinance or regulation or of any violation of Defendant's policies, procedures, or of any liability or wrongdoing whatsoever. Consistent therewith, Defendant has denied, and continues to deny, any allegation made by Plaintiff and Defendant has further denied, and continues to deny, that Plaintiff and the Aggrieved Employees have been damaged in any way or are entitled to any remedy in any form, whether legal or equitable. Neither this PAGA Agreement nor anything in this PAGA Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Defendant.

AGREED-UPON TERMS AND CONDITIONS OF PAGA SETTLEMENT

Now, therefore, with full knowledge and agreement as to the facts set forth above, the Parties to this PAGA Agreement agree as follows:

1. The Parties will cooperate in obtaining an order from the Court approving the PAGA Settlement described in this PAGA Agreement and dismissing the Action with prejudice (the "Approval Order"). The date that the Court issues its Approval Order shall be referred to as the "Approval Date." The Parties agree to use their best efforts to expedite the preparation and submission of documents (e.g., Request for Dismissal, Stipulated Request for Dismissal with Prejudice and/or Entry of Judgment of Dismissal, at Defendant's option) to the Court and LWDA within ten business day of the Parties' execution of this PAGA Agreement. Defendant shall not object to the filing of the foregoing papers with the Court as joint stipulation, on an *ex parte* basis,

and/or as a regularly noticed motion. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonable necessary to be prepared or filed with the Court, and shall take all steps that may be requested by the Court relating to or that are otherwise necessary to the approval and implementation of this PAGA Agreement.

2. Because the PAGA Settlement requires approval by the Court, the Parties enter into this PAGA Agreement on a conditional basis. This PAGA Agreement is expressly contingent upon the Court's approval of the PAGA Settlement pursuant to the terms and conditions set forth in this PAGA Agreement. If Court approval is not granted of this PAGA Agreement after second hearing (as referenced below), then this PAGA Agreement and the Individual Settlement Agreement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever.

3. Defendant shall pay the Gross Settlement Amount of Sixty Thousand Dollars and No Cents (\$60,000.00) (The Settlement Funds) divided by Phoenix Settlement Administrator (PSA) as follows: \$19,175.00 as the PAGA Settlement Sum; \$18,800.00 as legal fees and \$1,200 costs to Plaintiff's Counsel; \$19,175.00 as the individual settlement to Plaintiff; \$1,650 to Phoenix as the settlement administrator, all of the above paid by Defendant to PSA 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
- b. The amount of Four Thousand Seven Hundred Ninety Three Dollars and Seventy Five Cents (\$4,793.75), which amount represents 25% of the total PAGA Settlement Sum, which shall be distributed to all Aggrieved Employees on a prorata basis determined by the number of pay periods (whether partial or complete) each such Aggrieved Employee worked for Defendant during the PAGA Covered Period. All checks to Aggrieved Employees will be sent by Defendant to each Aggrieved Employee's last known address on file with Defendant and shall remain valid and negotiable for 180 days from the date of their issuance to Aggrieved Employees. If any checks are returned as undeliverable, Defendant shall make reasonable efforts to obtain an updated address and reissue a check to that Aggrieved Employee. If any checks are not cashed within 180 days of mailing, will be sent to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500, et seq. in the name of the Settlement Class Member to whom the uncashed check was

addressed, for the benefit of those Class Members who did not cash their checks until such time as they claim their property

2. Twenty Thousand Dollars and No Cents (\$20,000.00) to Plaintiff's Counsel, Payne Nguyen, LLP, in one check of which Eighteen Thousand Eight Hundred Dollars and No Cents (\$18,800.00) is for attorney's fees ("Attorneys' Fees") and One Thousand Two Hundred Dollars and No Cents (\$1,200.00) ("Plaintiff's Counsel's Costs") is for costs, as final payment for and complete satisfaction of any and all attorneys' fees and costs incurred by and/or owed to Plaintiff's Counsel related to the Action to be reported by Defendant on IRS form 1099 once Plaintiff's Counsel submits a signed W-9 to Defendant's attorney,
3. Nineteen Thousand One Hundred Seventy-Five Dollars and No Cents (\$19,175.00) ("Individual Settlement Amount") to Plaintiff Julian Cortez from the Settlement Fund as follows:
 - a. Five Thousand Dollars and No Cents (\$5,000.00) as final and complete compensation for all alleged California Labor Code Violations, wages owed, benefits, penalties, and associated damages or claims against Defendant, its attorney, agents, employees, and affiliates and assigns paid on a payroll check less applicable taxes, withholding, and deductions on a W2 upon Plaintiff's timely submittal of a valid W-4 to Defendant's attorney.
 - b. Fourteen Thousand One Hundred Seventy Five Dollars and No Cents (\$14,175.00) as final and complete satisfaction and compensation for participation in the Action, emotional distress, and general release of all claims known and unknown against

Defendant, its attorney, agents, employees, and affiliates and assigns to be reported by Defendant on IRS form 1099 upon Plaintiff's timely submittal of a valid W-9 to Defendant's attorney.

4. One Thousand Six Hundred Fifty Dollars and No Cents (\$1,650) as payment to Phoenix the settlement administrator to administer the settlement.

4. In the event the Court fails, on its first hearing, to approve this PAGA Agreement because of the amount of this PAGA Settlement is not adequate, then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, as between the Individual Settlement Agreement and this PAGA Agreement, in order to try to achieve Court approval of the PAGA Agreement upon second court hearing.

5. Upon entry of the Court's Approval Order, Plaintiff, acting on his behalf, acting on behalf of the LWDA, and acting on behalf of all Aggrieved Employees, hereby acknowledges full and complete satisfaction of and release and discharge and covenant not to sue Defendant, as well as its directors, officers, shareholders, partners, members, representatives, assignees, successors, business managers, marital community, agents, contractors, insurers, attorneys, and employees, past and present, and each of them (individually and collectively, "Releasees") from and with respect to Plaintiff's "PAGA Claims." For purpose of this PAGA Settlement, "PAGA Claims" are any and all claims for civil penalties pursuant to PAGA based on the allegations in Plaintiff's Complaint and/or PAGA Notice, broadly construed, including, but not limited to, civil penalties based on or arising from California Labor Code Sections 200, 201, 202, 203, 204, 210, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 2698 et seq., and the California Wage Orders, whether known or unknown, suspected or unsuspected, concealed or hidden, that were alleged in the Action and/or the PAGA Notice, or that could have been alleged

in the Action and/or PAGA Notice, which Plaintiff and any Aggrieved Employee has or had at any time through and including the Approval Date, against any of the Releasees.

6. This PAGA Agreement is intended to be effective as a bar to all PAGA Claims as stated above. Accordingly, Plaintiff hereby expressly waives any rights and benefits conferred by Section 1542 of the California Civil Code as to such PAGA Claims, which provides: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." Plaintiff acknowledges that Plaintiff may hereafter discover claims or facts in addition to or different from those which Plaintiff now knows or believes to exist with respect to the subject matter of this PAGA Agreement and which, if known or suspected at the time of executing this PAGA Agreement, may have materially affected this PAGA Settlement. Nevertheless, Plaintiff hereby waives any right, claim or cause of action that might arise as a result of such different or additional claims or facts relating to their PAGA Claims. Plaintiff acknowledges that Plaintiff understands the significance and consequence of such release and such specific waiver of Section 1542.

7. Plaintiff will not engage in or assist in any litigation against Defendant relating to anything occurring prior to the Approval Date of this PAGA Agreement, except as compelled by order of a court or as necessary to participate in an investigation or proceeding conducted by the United States Equal Employment Opportunity Commission ("EEOC"), the California Department of Fair Employment and Housing ("DFEH"), or other governmental agency. Plaintiff further acknowledges and understands that this PAGA Agreement does not prohibit Plaintiff from filing an administrative charge or claim with: (a) the EEOC or DFEH or any state or local agency authorized to accept such charge or claim, (b) the United States National Labor Relations Board (c) any current or future worker's compensation claims are expressly precluded from this agreement. This PAGA Agreement does, however, preclude Plaintiff from receiving any

monetary, injunctive, or other personal relief related in whole or in part to claims released in this PAGA Agreement. Should any individual or entity who is not subject to this PAGA Agreement bring an administrative charge, claim, or action against Defendant or any Releasee that results in assignable recovery or relief for Plaintiff, Plaintiff waives any right to such recovery or relief and specifically assigns to Defendant and/or any Releasee, as the case may be, the right to any such recovery or relief arising from such proceeding.

8. Upon the Approval Date of this PAGA Agreement, Plaintiff and Aggrieved Employees shall be forever barred and enjoined from instituting or prosecuting, either directly or indirectly, individually, collectively, and/or representatively, any PAGA Claim released by paragraph 5 above of this Agreement against any Releasee. This PAGA Agreement may be pleaded by any Releasee as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted, asserting any PAGA Claim released by paragraph 5 above of this Agreement.

9. Plaintiff and the Aggrieved Employees shall pay any federal or state taxes that may be required to be paid with respect to this PAGA Agreement and agree to indemnify and hold Defendant and all Releasees harmless for any of their tax liability whatsoever related to the monetary consideration provided herein.

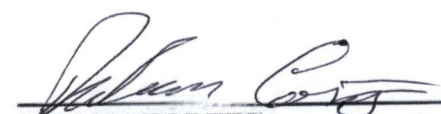
10. If any provision of this PAGA Agreement or its application is held invalid, the invalidity shall not affect other provisions or applications of the PAGA Agreement which can be given effect without the invalid provisions or application and, therefore, the provisions of this PAGA Agreement are declared to be severable. This PAGA Agreement is an integrated agreement and is the entire agreement of the Parties as to the PAGA Claims, except that the Parties have executed the Individual Settlement Agreement, which itself is contingent upon the Court's Approval of this PAGA Agreement. This PAGA Agreement and the separate Individual Settlement Agreement supersede all prior negotiations and all agreements, whether written or oral. This

PAGA Agreement may be modified only by a writing signed by all the Parties. This PAGA Agreement may be executed in counterparts. Any copy or facsimile of this PAGA Agreement shall be as effective as an original.

11. The Parties agree that upon the occurrence of the entry of judgment or dismissal pursuant to the terms of this PAGA Agreement, this PAGA Agreement shall be enforceable by the Court pursuant to Code of Civil Procedure Section 664.6 and the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties to the fullest extent to interpret, enforce, and effectuate the terms, conditions, intents and obligations of the PAGA Agreement.

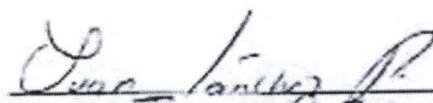
12. The undersigned acknowledge that they have read this PAGA Agreement, that they have had opportunity to consult with an attorney, that they have had a reasonable amount of time to consider this PAGA Agreement, that they fully understand and appreciate its meaning, and that it includes a full and final release and settlement of Plaintiff's, the LWDA's, and the Aggrieved Employees' PAGA Claims, whether such claims are currently known or not, as of the date of signing that such parties they may have against Defendant, and Plaintiff voluntarily signs it in his individual and representative capacities.

Executed on 11.24, 2020


JULIAN CORTEZ

Executed on 11-11-2020, 2020

By:

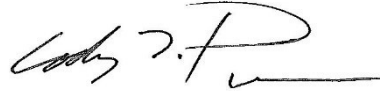

Name: Juan Sanchez
Title: President
Authorized Agent for Defendant
M.S. LANDSCAPE & GARDEN, INC.

Approved as to form.

Executed on November 24, 2020

By:

PAYNE NGUYEN, LLP



CODY PAYNE
KIM NGUYEN
Attorneys for Plaintiff
JULIAN CORTEZ

Executed on 11-12-2020, 2020

By:

LAW OFFICE OF JOSHUA Y. LEE



JOSH LEE
Attorney for Defendant
M.S. LANDSCAPE & GARDEN, INC.