

SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS

This Settlement Agreement and Release is a compromise between JOSE PENA (“Pena” or “Employee”), N&S TRACTOR CO. (“N&S” or “Employer”) (“Defendant”) (all parties are collectively referred to as “the Parties”) regarding the PAGA claims arising out of or relating to Pena’s employment with N&S. Nothing in this release affects or extinguishes or releases the claims in the FEHA case of Jose Pena, Case No. 21CV-02978, asserting causes of action for (1) race/ethnicity/language harassment in violation of Gov’t Code §§ 12940 *et seq.*, (2) retaliation in violation of Gov’t Code §§ 12940, *et seq.*, and (3) race/ethnicity/language discrimination in violation of Gov’t Code §§ 12940, *et seq.* (“the Harassment Action”).

RECITALS

1.0 On May 8, 2021, Pena filed a Representative Complaint in the Merced County Superior Court entitled *Jose Pena, as an individual and on behalf of all aggrieved employees, v. N&S Tractor Co.*, Case No. 21CV-01925, 34-2020-00284774, asserting claims For Civil Penalties for Violations of the California Labor Code under Private Attorneys General Act (Cal. Lab. Code §§ 2699, *et seq.*) (“the PAGA Representative Action”). N&S filed an Answer on August 3, 2021.

1.1 On December 15, 2022, Pena filed a Demand for Arbitration with JAMS Resolution Center entitled *Jose Pena, as an individual and on behalf of all aggrieved employees, v. N&S Tractor Co.*, Ref. No. 5220002239, asserting claims For Civil Penalties for Violations of the California Labor Code under Private Attorneys General Act (Cal. Lab. Code §§ 2699, *et seq.*) (“the Arbitration”). Defendants filed a Response on January 12, 2023.

1.2 Defendants deny each and every one of Pena’s claims and contend they are not liable to Pena in any amount on any theory. The Parties are agreeing to this Agreement solely to avoid the time and expense of continued litigation.

1.3 Pena warrants that he has not sold, assigned, or transferred any claim or cause of action which he has or had against Defendants or any other person or entity who is covered by this release of claims, and that Pena will not file nor permit to be filed any claims against Defendants, except as to remedy a breach of this Agreement by Defendants.

THEREFORE, in consideration of the mutual promises, assurances, and covenants set forth in this Agreement, the Parties agree as follows:

AGREEMENT

2.0 In consideration of Pena's release of his asserted PAGA claims, on his own behalf and on behalf of aggrieved employees, against Defendant, including its officers, directors, employees, managing agents, insurers, and attorneys, Pena agrees to accept, and Defendant agrees to pay, the total sum of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000), inclusive of all taxes, attorneys' fees and costs, and liens, in full and final resolution of this matter and the Arbitration filed against Defendant. Plaintiff and his counsel may seek up to \$60,000 in attorney's fees and costs, and up to an award of \$40,000 to compensate Plaintiff for his individual claims and for representing the aggrieved employees, as well as for costs of administration of the distribution of settlement monies, none of which shall increase any costs or payments due by Defendants in excess of \$150,000.00.

2.1 The settlement is conditioned on approval by the Merced County Superior Court of the settlement of the PAGA Representative Action. If the Merced County Superior Court does not approve of the settlement of the PAGA Representative Action, this entire settlement of all matters is null and void.

2.2 The settlement monies shall be paid within thirty (30) days of the Merced County Superior Court's approval of the settlement and execution and delivery of this Agreement to Defendants' counsel. The payment for the PAGA portion of the penalties to be distributed to third-party aggrieved employees and the LWDA will be payable as directed by the retained third party administrator, but the costs, attorney's fees, and enhancement and compensation of Plaintiff Pena awarded by the Court from the PAGA settlement, shall be payable to Law Office of Alfredo Nava Jr., APC, by check(s) issued to "Law Office of Alfredo Nava Jr., Client Trust Account", to be delivered to 3500 W. Beverly Blvd., Montebello, CA 90640. Prior to delivery of any settlement payments, Pena's attorney agrees to provide Form W-9s for Plaintiff and Plaintiff's counsel to counsel for Defendants.

2.3 Pena acknowledges that he has received any and all wages and compensation due him, and that Defendant has no obligation to pay him any back pay, other wages, or any penalties based upon any of his allegations and/or his employment with N&S other than what is set forth in this Agreement and what is addressed in the separate FEHA settlement.

2.4 Pena acknowledges that he is responsible for properly reporting for tax purposes the amounts he receives and that he is responsible for any and all tax liability that may accrue to him solely from the settlement payments made herein. Pena agrees to hold Defendant harmless and indemnify Defendant for any liability that he may incur arising out of Pena's failure to pay any taxes assessed against him as a result of his receipt of any portion of the payment.

2.5 Pena acknowledges he is solely responsible to pay his attorneys for the fees and costs incurred in this action, and there is no “prevailing party” in this action. Pena also agrees to be solely responsible for any outstanding liens that may exist regarding his employment with N&S that were voluntarily incurred and agreed upon by him relating to this action, any medical expenses he claims to have incurred as a result of any of his lawsuits, and any attorney liens that are outstanding.

2.6 In consideration of the payments referenced above, Pena compromises, releases and settles any and all claims that have been brought or could have been brought in the PAGA action, including for alleged violations of the California Labor Code and the Orders of the California Industrial Welfare Commission regulating wages, hours, and working conditions, for unpaid wages, penalties, liquidated damages, and related contractual or non-contractual claims, against Defendant and its predecessors and successors in interest, subsidiaries and predecessors and successors in interest, heirs and assigns, past, present, or future offices, directors, partners, shareholders, agents, employees, insurers, and legal representatives, or in any way related to Pena’s employment with N&S, whether based in tort, contract, public policy, statute, regulation, common law, or any other theory of recovery, pursuant to federal, state or local law. This release is intended to be broad and to encompass all claims that could have been brought in Pena’s PAGA action, on his own behalf and on behalf of aggrieved employees.

2.7 Nothing in this Agreement shall be interpreted or construed as an admission of liability by Defendant. Defendant denies all of Pena’s material allegations. Nothing in this Agreement shall be interpreted or construed as to alter the at-will nature of Pena’s previous employment with N&S.

UNKNOWN CLAIMS

3.0 With the exception of the FEHA claims separately brought and covered by another agreement, Pena and Defendant agree that this release includes any and all claims at law or inequity or in arbitration which may exist, but may not have yet been discovered, and expressly waive all rights under Section 1542 of the California Civil Code which provides that:

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

3.1 Pena and Defendant understand and acknowledge that the significance and consequences of this waiver of California Civil Code section 1542 is that they will not be able to

make any claim for alleged damages that exist as of the date of their signatures on this Agreement, other than those for the enforcement of both settlement agreements.

ADVICE OF ATTORNEY

4.0 Pena warrants and represents that in executing this Agreement, he was advised to seek the advice of an attorney, that he is represented by legal counsel, that he has in fact consulted with his attorney regarding this Agreement, that he has had the terms of this Agreement and consequences completely explained to him by his attorney, and that he fully understands the terms of this Agreement.

4.1 Pena represents and acknowledges that he is voluntarily entering into this Agreement with the full knowledge of the rights that he may be waiving.

SUCCESSORS

5.0 This Agreement shall inure to the benefit of each party and that party's predecessors, successors, subsidiaries, representatives, heirs, assigns, agents, officers, directors, employees, and personal and legal representatives, past, present, or future.

EFFECTUATION

6.0 The Parties shall execute any and all other documents and do all other things which may be reasonably necessary to carry out the terms of this Agreement.

ATTORNEY'S FEES AND COSTS

7.0 Each party shall bear all of their own attorney's fees and costs incurred in connection with the negotiation and preparation of this Agreement.

ENTIRE AGREEMENT

8.0 With the exception of the separate FEHA agreement, this Agreement is the complete and entire agreement between the parties as of the effective date of the Agreement and is intended to be fully integrated and binding. Any and all prior agreements or understandings, whether written or oral, that are not set forth in this Agreement or the separate agreement addressing Pena's FEHA claims shall have no force or effect. Each party acknowledges and represents that in executing this Agreement, each has not relied upon any inducement, promises, or representations made by the other party or any person representing any other party which are not specifically set forth in this Agreement or the separate agreement releasing Pena's FEHA

claims.

8.1 This Agreement may not be modified, except by a written agreement signed by all parties.

8.2 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

FACSIMILE/ELECTRONIC SIGNATURE

9.0 Signatures to this Agreement transmitted and exchanged via facsimile or email shall, for all purposes, have the same legal force and effect as the original signatures.

GOVERNING LAW

10.0 This Agreement shall be governed for all purposes by the laws of the State of California. The parties stipulate that the Court may retain jurisdiction to enforce the terms of this Agreement. Any proceeding to enforce or interpret this Agreement shall take place in Merced County, California.

10.1 The Parties and their representatives agree that this Agreement is enforceable pursuant to Code of Civil Procedure section 664.6 and should an action to enforce this Agreement become necessary, the Court may award reasonable attorney's fees and costs.

10.2 The Parties and their representatives agree that this Agreement satisfies the requirements of Evidence Code section 1123(b).

10.3 The Parties waive the mediation privilege contained in Evidence Code section 1126 to the extent necessary to allow this Agreement to be enforced by a court.

MUTUAL DRAFTING

11.0 Each party to this Agreement has had an opportunity to participate in the drafting of this Agreement to the extent they desire, and, therefore, this Agreement shall be construed according to its plain meaning and not strictly construed for or against either party.

SEVERABILITY

12.0 Should any provision of this Agreement be declared or be determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, then the legality, validity,

or enforceability of the remaining parts, terms, or provisions shall not be affected, and the illegal, unenforceable, or invalid part, term, or provision shall be severable and deemed not to be a part of this Agreement.

EFFECT OF WAIVER OF BREACH

13.0 No waiver of any breach of any term or provision of this Agreement shall be construed to be, or shall be, a waiver of any other breach of this Agreement. No waiver shall be binding unless it is in writing and signed by the party waiving the breach.

SIGNATURES

Plaintiff:

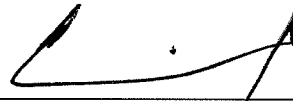
Dated: 08 / 29 / 2024



By: _____
Jose Pena

Defendant:

Dated: 9/9/24



By: _____
N&S Tractor Co.