

SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIM

This Settlement Agreement and Release of PAGA Claim ("Settlement Agreement") is made by and between Plaintiff Salvador Gonzalez ("Plaintiff"), on behalf of himself and as a representative for the California Labor Workforce Development Agency ("LWDA"), and Defendant Sunnyslope Tree Farm, Inc. ("Defendant"), who may collectively be referred to herein as the "Parties," and each may be individually referred to as a "Party."

A. Definitions

The following terms, when used in this settlement agreement, shall have the following meanings:

1. "Action" or "Lawsuit" means *Gonzalez v. Sunnyslope Tree Farm, Inc.*, San Bernardino Superior Court, Case Number CIVSB2126147.
2. "Agreement," "Stipulation," or "Settlement Agreement," mean this Settlement Agreement and Release of PAGA Claim, including any attached Exhibits.
3. "Attorneys' Fees and Costs" means the amount of \$38,295 (thirty-three and one-third percent of the Settlement Amount) which shall be allocated to Plaintiff's Counsel for attorneys' fees, and actual costs in the amount of \$11,118.23, all of which shall be paid out of the Gross Settlement Amount. This Settlement is not conditioned on approval of the Attorneys' Fees and Costs; in other words, this Settlement shall remain in full force and effect if the Court awards less than the requested Attorneys' Fees and Costs. If less than \$49,413.23 is awarded for Attorneys' Fees and Costs, the difference shall return to the Net Settlement Amount.
4. "Court" (or "Judge") means the San Bernardino Superior Court, the Honorable David Cohn, judge presiding.
5. "Defendant" means Sunnyslope Tree Farm, Inc.
6. "Defendant's Counsel" means Mark D. Magarian and Krista DiMercurio of Magarian & DiMercurio, APLC.
7. "Effective Date" means the date that the Gross Settlement Amount is fully-funded by Defendant.
8. "Eligible Pay Period" means any pay period worked by a PAGA Employee during the PAGA Release Period.
9. "Final Approval Date" means the date that the Court enters the Final Order and Judgment.
10. "Final Order and Judgment" means the Court's order approving this Private Attorneys General Act of 2004 ("PAGA") Settlement and Final Judgment. The Final Order and Judgment will be submitted, substantially in the form attached hereto as **Exhibit 1**, in connection with the Stipulation for Approval of this Settlement.

11. “Gross Settlement Amount” means the maximum settlement amount that Defendant will pay in connection with this Settlement, which is \$115,000.00. This is a non-reversionary Settlement; no portion of the Gross Settlement Amount will return to Defendant under any circumstances.
12. “LWDA Settlement Proceeds” means the seventy-five percent (75%) of the Net Settlement Amount that shall be paid to the Labor Workforce and Development Agency (“LWDA”).
13. “Net Settlement Amount” means the amount that remains after deducting Attorneys’ Fees and Costs, Settlement Administration Costs, and the Service Awards, from the Gross Settlement Amount.
14. “Notice” means the notice that will be sent to the PAGA Employees with payment after the Final Order and Judgment is entered by the Court. The Notice will be sent to PAGA Employees substantially in the form attached hereto as **Exhibit 2**. The Notice will also be sent in Spanish.
15. “LWDA Notices” means the notices submitted June 30, 2021, July 27, 2021 and April 5, 2022, by Plaintiff, to LWDA notifying the LWDA of alleged violations by Defendants.
16. “PAGA Employees” means all non-exempt employees of Defendant who worked for Defendant in California at any time from June 30, 2020 through August 10, 2021.
17. “PAGA Employees Settlement Proceeds Fund” means the twenty-five percent (25%) of the Net Settlement Amount that shall be paid to the PAGA Employees.
18. “PAGA Representative Claims” means Plaintiff’s PAGA claims under California Labor Code § 2698 *et. seq.* based on alleged predicate violations of the California Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.2, 226.7, 248.1, 248.2, 248.3, 248.5, 300, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 1199, 2802, 2810.5, and all alleged violations of the accompanying and relevant IWC Wage Order provisions (including but not limited to failure to provide suitable seating and failure to provide adequate resting facilities) cited in Plaintiff’s LWDA Notice and/or alleged in the Operative Complaint.
19. “PAGA Settlement” or “Settlement” means the settlement of the Action as memorialized in this Agreement.
20. “PAGA Release Period” means June 30, 2020 through August 30, 2022.
21. “Parties” means Plaintiff and Defendant collectively.
22. “Plaintiff” means Salvador Gonzalez.
23. “Plaintiff’s Counsel” means Scott E. Wheeler of the Law Office of Scott E. Wheeler and Marcia Guzman of Attorneys for Workers’ Rights.
24. “Released Parties” means Defendant and their parents, subsidiaries, predecessors, successors, assigns, owners, officers, directors, employees and agents.

25. "Settlement" means the collective settlement of the PAGA Representative Claims as memorialized in this Agreement.

26. "Settlement Administrator" means Phoenix Settlement Administrators. The Settlement Administrator will agree to enter into a confidentiality agreement by which it agrees to maintain as confidential the information so designated by Defendant and not to disseminate any designated information without the written approval of Defendant. The Settlement Administrator will be responsible for, *inter alia*, sending Notice and payments to PAGA Employees and the LWDA and distributing other payments as set forth in this Agreement.

27. "Settlement Administration Costs" means the amount of \$2,995.00 which shall be paid to Phoenix Settlement Administrators for performing the duties provided under the Settlement. The Settlement Administration Costs shall be no more than \$2,995.00 and if less than \$2,995.00 is approved for Settlement Administration costs, the difference shall return to the Net Settlement Amount.

28. “Service Award” means the amount of \$5,000.00 which shall be allocated to Plaintiff, subject to Court approval, in recognition for his efforts in prosecuting the case, obtaining the benefit of the Settlement, and as consideration for Plaintiff’s released claims, which includes a broad general release, against Defendant. The Service Award shall be paid from the Settlement Amount. This Settlement is not conditioned on approval of the Service Award; in other words, this Settlement shall remain in full force and effect if the Court awards less than the requested \$5,000.00. If less than \$5,000.00 is awarded to Plaintiff, the difference shall return to the Net Settlement Amount.

B. General

1. On September 3, 2021, Plaintiff filed the Action in the San Bernardino Superior Court, pursuant to the PAGA, alleging failure to provide required meal periods, failure to provide required rest breaks, failure to pay overtime wages, failure to pay minimum wages, failure to pay all wages due to discharged and quitting employees, failure to maintain required records, failure to furnish accurate itemized wage statements, failure to indemnify employees for necessary expenditures incurred in discharge of duties, and failure to provide supplemental COVID-19 sick leave.

2. On August 10, 2022, the Parties participated in a mediation with the highly experienced mediator and retired judge, Hon. Suzanne Segal. After a full-day ZOOM mediation, the Parties were unable to reach a settlement agreement. Thereafter, the Parties continued to exchange information and engage in settlement negotiations with the assistance of Judge Segal. On August 30, 2022, the Parties accepted a mediator's proposal.

3. Defendant denies all of the allegations and claims asserted in the Lawsuit and denies that it has committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct of any kind.

4. The Parties have conducted a thorough investigation into the facts of the Action. This included, *inter alia*, conducting extensive informal discovery that involved the exchange of information and documents relating to the PAGA Representative Claims. Defendant produced documents consisting of employee handbooks and policy documents, etc. Defendant also produced the electronic time and

payroll records for Aggrieved Employees which consisted of hundreds of lines of data. Plaintiff retained an expert to analyze this data and conduct an exposure analysis consistent with Plaintiff's theories of liability. Based on the foregoing data and on their own independent investigation and evaluation, Plaintiff's Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the LWDA and PAGA Employees in light of all known facts and circumstances, including the risk of significant delay, uncertainty associated with litigation, various defenses asserted by Defendant, and potential appellate issues. Defendant and counsel for Defendant also agree that the settlement is fair.

5. The Parties understand, acknowledge, and agree that this Agreement constitutes a compromise of Plaintiff's PAGA Representative Claims and that it is the desire and intention of the Parties to affect a final and complete resolution of the Action, including the PAGA Representative Claims, against Defendant. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission of liability by Defendant.

6. Under California Law, the State may assess and collect civil penalties from employers for violations of certain provisions of the California Labor Code. (*See* Cal. Lab. Code §§ 2698 *et seq.*) Under PAGA, however, if an "aggrieved employee" "give[s] written notice by certified mail to the [State] and the employer of the specific provision of the [Labor Code] alleged to have been violated," and the State thereafter decides not to investigate, as was the case here, or does investigate and determines that a citation against the employer should not be issued, the employee may, "as an alternative" to enforcement by the State, act as a proxy or agent of the state's labor law enforcement agencies and bring a civil action under PAGA to recover civil penalties "on behalf of himself or herself and other current or former employees." *Id.* "[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the state and 25 percent to the aggrieved employees." *Id.*

7. California Labor Code § 2699(1)(2) provides that the trial court shall "review and approve any settlement of any civil action filed pursuant to this part." Plaintiff will submit this Settlement Agreement to the LWDA concurrently with the filing of the Stipulation for Approval with the Court.

8. In consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

C. Terms of Settlement

1. Subject to the Court's approval of the Settlement pursuant to California Labor Code § 2699(1)(2), which counsel and the Parties agree to recommend in good faith to the Court, the Parties agree to the following binding settlement of the Action.

2. The Gross Settlement Amount will be distributed in the following manner:

- a. **Settlement Administration Costs:** The costs associated with settlement administration (e.g. preparing and mailing payments to LWDA and PAGA Employees, tax documentation, etc.) shall be paid from the Settlement Amount and shall not exceed \$2,995.00. The Parties agree to use Phoenix Settlement Administrators as the Settlement

Administrator. The Parties and their counsel represent that they do not have any involvement in the governance or work of the Settlement Administrator.

- b. **Attorneys' Fees and Costs:** The Parties agree that, subject to the Court's review and approval, Plaintiff's Counsel will be paid one-third of the Gross Settlement Amount as attorneys' fees \$38,295.00, plus actual litigation costs not to exceed \$20,000.00 (actual costs total \$11,118.23), incurred in connection with work performed to litigate the Action and obtain Court approval of the Settlement, which will be paid from the Settlement Amount.
- c. **Service Award to Plaintiff:** The Parties agree that, subject to the Court's review and approval, Plaintiff will be paid a service award of \$5,000.00, which will be paid from the Gross Settlement Amount.
- d. **Net Settlement Amount:** After deducting Settlement Administration Costs, Attorneys' Fees and Costs, and the Service Award from the Gross Settlement Amount, the remainder forms the Net Settlement Amount (which totals \$57,591.77 if the amounts set forth above are approved by the Court). The Net Settlement Amount shall be allocated seventy-five percent (75%) to the California Labor & Workforce Development Agency ("LWDA Settlement Proceeds"), which is estimated to total approximately \$43,193.82. The remaining twenty-five percent (25%) of the Net Settlement Amount, which is estimated to total approximately \$14,397.95 shall be paid to the PAGA Employees on a *pro rata* basis ("PAGA Employees Settlement Proceeds Fund"), which shall be determined based on the number of Eligible Pay Periods that he or she worked for Defendants during the PAGA Release Period and shall be calculated as follows:

The PAGA Employees Settlement Proceeds Fund will be divided by the total number of Eligible Pay Periods worked by all PAGA Employees during the PAGA Release Period, and the resulting figure will be referred to as the "Multiplier." Each PAGA Employee's *pro rata* share of the PAGA Employees Settlement Proceeds Fund will be determined by multiplying the Eligible Pay Periods that the PAGA Employee worked by the Multiplier. That amount shall be referred to as the PAGA Employee's "Individual Share."

- e. **Taxes and Reporting:** The PAGA Employees' Individual Share will be treated as non-wage income and reported by the Settlement Administrator on IRS Form 1099 (if applicable) to the respective PAGA Employee and applicable governmental authorities.

D. Release as to the PAGA Representative Claims

1. Upon the Effective Date, Plaintiff, as the representative for the State of California, and on behalf of all Aggrieved Employees, along with all Aggrieved Employees themselves, are deemed to forever completely release and discharge, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties with respect to any claim for the recovery of civil penalties under the California Private Attorneys General Act, California Labor Code Section 2698, *et seq.* only. It is expressly understood and agreed that this settlement includes a release of all the PAGA Representative Claims, based on all alleged violations of Labor Code

§§ §§ 201, 202, 203, 204, 210, 221, 226, 226.2, 226.7, 248.1, 248.2, 248.3, 248.5, 300, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 1199, 2802, 2810.5, and all alleged violations of the accompanying and relevant IWC Wage Order provisions (including but not limited to failure to provide suitable seating and failure to provide adequate resting facilities) cited in Plaintiff's LWDA Notices and/or alleged in the Operative Complaint. The release shall be effective as of the Effective Date, and it shall apply to claims within the above scope impacting Aggrieved Employees arising within the PAGA Period.

2. Upon the Effective Date, without waiving their rights to the Court approved fees and reimbursement of costs as provided pursuant to Paragraph A.3, Plaintiff's Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for Attorneys' Fees and Costs incurred in connection with the Operative Complaint and PAGA Notices and the PAGA Period facts stated in the Operative Complaint and the PAGA Notices.

3. In accordance with California law as stated in *inter alia* *Arias v. Superior Court* (2009) 46 Cal.4th 969, 985, a judgment in “a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 . . . is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding,” which the Final Order shall so reflect. Accordingly, the Final Order and Judgment shall be binding on all PAGA Employees (including all nonparty aggrieved employees) as to all the PAGA Representative Claims. A statement to this effect shall be included in the Notice sent to the PAGA Employees. The Final Order shall not bind nor release the PAGA Employees of any individual wage claims (or other individual claims), unless such claim is subject to res judicata, issue preclusion, or collateral estoppel.

E. Release by Named Plaintiff Only

1. Release and Covenant Not to Sue

a. In consideration for the terms and provisions of the Agreement, Plaintiff, for himself, and for his heirs, assigns, partners, executors, conservators, administrators, agents, employees, attorneys, past and present (collectively, "Plaintiff Affiliates"), hereby fully and without limitation releases, covenants not to sue, and forever discharges Defendant, their subsidiaries, divisions, affiliated companies, affiliated partnerships, trustees, directors, officers, supervisors, shareholders, partners, agents, designees, employees, legal and equitable owners, members, associates, representatives, consultants, insurers, reinsurers, attorneys, heirs, assigns, executors, beneficiaries, and administrators, predecessors and successors, past and present, (collectively "Defendant Releasees"), both individually and collectively, from any and all rights, claims, contracts, agreements, debts, demands, liabilities, actions, and causes of action, whether in law or in equity, suits, damages, liabilities, losses, attorneys' fees, costs, and expenses, of whatever nature whatsoever, known or unknown, fixed or contingent, suspected or unsuspected ("Claims"), that Plaintiff or the Plaintiff Affiliates now have, or may ever have, against Defendant, or any of Defendants Releasees, for any matter, occurring on or before the Effective Date of this Agreement.

b. Without limiting the generality of the foregoing, Plaintiff acknowledges that the foregoing general release applies to any and all claims he or the Plaintiff Affiliates now have, or may

ever have, against Defendant, or any of Defendant Releasees, that arise out of or are in any way related to any alleged violation of any federal or state law that regulates any aspect of the employer-employee relationship, including any claims for any alleged violations of any federal or state employment discrimination, harassment, and retaliation laws, including the California Fair Employment and Housing Act (which prohibits discrimination, harassment, and retaliation based upon one's actual or perceived ancestry, race, religion, sex, sexual orientation, gender, gender identity, gender expression, age, color, national origin, disability, medical condition, military or veteran status and marital status), the California Family Rights Act, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, and the Family Medical Leave Act; as well as the Equal Pay Act; the Fair Labor Standards Act, the Employee Retirement Income Security Act of 1974, the California Business and Professions Code, the California Labor Code, and the California wage orders; as well as any claims for any alleged violation of public policy or retaliation; any claims for wages, hours, unpaid overtime, failure to pay minimum wage, failure to pay for downtime or waiting time, failure to provide meal or rest breaks or pay one hour's wages in lieu thereof, failure to indemnify for all work related expenditures and losses, and all related statutory claims, including but not limited to, alleged violation of California Labor Code sections 201-204, 208, 210, 215-216, 218.5, 225.5, 226, 226.3, 226.6, 226.7, 450, 500, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2810.5, 2926, 2927, California Business and Professions Code sections 17000 and 17200 et. seq., the relevant Wage Orders issued by the Industrial Welfare Commission, Civil Code sections 52 and 52.1, or any other claim for any statutory penalty that could have been asserted under California law that arise from the allegations as described, any claims concerning or related to meal and/or rest breaks, inaccurate wage statements, any other employment-related claims under any federal, state, or local law, statute, regulation, or ordinance; and any and all common-law causes of action, including breach of contract, breach of implied contract, breach of the covenant of good faith and fair dealing, fraud, misrepresentation, unfair competition, unfair business practices, false advertising, negligence, defamation, infliction of emotional distress, invasion of privacy, and wrongful termination, which arise from any and all events occurring on or before the Effective Date of this Agreement, including without limitation, all claims arising from action or inaction by Defendant, or any of Defendant Releasees.

- c. **Promise Not to Prosecute:** Plaintiff agrees that neither he nor any of his agents or representatives shall, at any time hereafter, commence, maintain or prosecute any action, suit, proceeding, investigation, complaint, claim, grievance, or charge with any court, arbitrator, or any other body or person, whether Federal, State, contractual or otherwise, on his behalf, except in response to governmental agency or court inquiries or as compelled by legal process, against Defendant or any of Defendant's Releasees, based in whole or in part upon, or arising out of or in any way connected with, any of the Released Claims. Plaintiff further agrees that neither he nor any of his agents or representatives, including any of his attorneys, shall, at any time hereafter, aid, represent, or otherwise assist others in prosecuting such action, suit, proceeding, investigation, complaint, claim, grievance, or charge on his behalf, except for the PAGA claim, and except in response to governmental agency or court inquiries or as compelled by legal process, against Defendant or the Defendant Releasees, based in whole or in part upon, or arising out of or in any way

connected with, any of the Released Claims, including, but not limited to, serving as a class representative or participating in a class action against Defendant under the California Labor Code. Plaintiff further agrees to indemnify and hold Defendant and Defendant's Releasees harmless from and against any and all claims, demands, causes of action, damages or liability of any kind, including the cost of defense and reasonable attorneys' fees arising out of or in connection with, any action, suit, proceeding, investigation, complaint, claim, grievance, or charge commenced, maintained, or prosecuted by him contrary to the terms of this Agreement.

- d. Notwithstanding the generality of the foregoing, Plaintiff also understands and agrees that he is not waiving any right or claim that cannot be waived as a matter of law, such as the right to file a charge (seeking no monetary recovery) with or participate in an investigation by a governmental administrative agency.

2. In addition to the Release of the PAGA Representative Claims, Plaintiff agrees to release all known and unknown claims, including a release under Civil Code Section 1542. To effect a full and complete general release as described above, Plaintiff expressly waives and relinquishes all rights and benefits of section 1542 of the Civil Code of the State of California and does so understanding and acknowledging the significance and consequence of specifically waiving section 1542. Section 1542 of the Civil Code of the State of California states as follows:

A general release does not extend 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.

Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, Plaintiff expressly acknowledges this release is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at the time of signing this Agreement, and Plaintiff expressly acknowledges that this Agreement contemplates the extinguishment of any such claims. Plaintiff warrants Plaintiff has read this Agreement, including this waiver of California Civil Code section 1542, and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's choosing about this Agreement and specifically about the waiver of section 1542, and Plaintiff warrants that Plaintiff understands this Agreement and the section 1542 waiver, and Plaintiff freely and knowingly enters into this Agreement. Plaintiff further acknowledges that Plaintiff later may discover facts different from or in addition to those Plaintiff now knows or believes to be true regarding the matters released or described in this Agreement, and even so Plaintiff agrees that the release contained in this Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes or controversies released or described in this Agreement or with regard to any facts now unknown to Plaintiff relating thereto.

Plaintiff's general release shall become effective on the Effective Date.

The general release set forth in Paragraph E of this Agreement applies only to Plaintiff. It does not apply to any PAGA Employees.

F. Settlement Approval and Implementation Procedures

1. Pursuant to California Labor Code § 2699(1)(2), or otherwise for the purposes of obtaining court approval of the Settlement, Plaintiff will file a Stipulation for Approval, separate declaration(s) advocating that the Settlement is fair, adequate, and reasonable, and any other documents in support of approval of the Settlement. Defendant shall not oppose the filing of any of these documents. Defendant shall also reasonably cooperate with any efforts to obtain approval of this Settlement.

2. No later than ten (10) calendar days after the Final Approval Date, Defendant shall send to the Settlement Administrator a list of all PAGA Employees including each PAGA Employee's: (1) full name; (2) last known address; (3) social security number; and (4) the number of Eligible Pay Periods he or she worked as a non-exempt employee of Defendants in California during the PAGA Release Period (the "PAGA Employees List"). This information shall be treated as and remain confidential and shall be used solely to manage the notice and payment process described herein, and it shall not be disclosed to anyone other than the Settlement Administrator, except to applicable taxing authorities, or pursuant to express written authorization of Defendant, the individual in question, or by order of the Court.

3. No later than One Hundred Fifty (150) calendar days after the Final Approval Date, Defendant shall fully fund the Gross Settlement Amount by wire transferring to the Settlement Administrator the Gross Settlement Amount. The Settlement Administrator will hold all payments in an interest-bearing account until the full Gross Settlement Amount is received. Any interest earned will go to the Net Settlement Amount.

4. The Settlement Administrator will perform all settlement administration duties, including (i) performing a National Change of Address (“NCOA”) search to update the addresses of the PAGA Employees, (ii) issuing the Notice and payments to the PAGA Employees, (iii) issuing any required IRS forms, and (iv) issuing payment to the LWDA and Plaintiff’s Counsel. The Settlement Administrator shall issue the Notice and payments to the PAGA Employees along with required IRS forms and issue payment to the LWDA for PAGA penalties, a Service Award to Plaintiff, and Attorneys’ Fees and Costs to Plaintiff’s Counsel, no later than ten (10) calendar days after it receives the full Gross Settlement Amount from Defendants.

5. PAGA Employees shall have one hundred and eighty (180) calendar days after the mailing to cash or deposit their settlement checks. If any PAGA Employee's check is not cashed or deposited within that period, the check will be voided and a stop-payment will be issued. Any funds in the Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be paid to the State of California Controller's Unclaimed Property division. Neither Defendants, Defendants' Counsel, Plaintiff's Counsel nor Plaintiff will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, unauthorized negotiation of settlement checks or failure to timely cash a settlement check within the 180-day period.

6. Upon the Effective Date, the Parties will: (i) be bound by the terms and conditions of this Agreement, and the releases set forth therein; and (ii) be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the settlement and the Court's Final Order and Judgment.

G. Miscellaneous Provisions.

1. **Additional Aggrieved Employees:** As of the date that Defendant has executed this Agreement, there are 94 PAGA Employees included in the Settlement from June 30, 2020, through August 30, 2022. Defendants shall provide Plaintiff with a current list (with personally identifying information redacted) of the number of PAGA Employees for the PAGA Release Period, at the time that Plaintiff files a motion or request for approval of this Settlement, which Defendant has confirmed will not be more than 94 PAGA employees.
2. **Voiding the Agreement:** The Settlement Agreement shall be voidable and unenforceable as to all Parties herein at the option of either Party if (a) the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties, or (b) the Court should for any reason fail to enter a judgment, or (c) the approval of the Settlement and judgment is reversed, modified or declared or rendered void. In that event, then neither the Settlement nor any of the related negotiations or proceedings shall be of any force or effect, and all parties to the Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Any fees already incurred by the Settlement Administrator shall be paid by Defendant. Notwithstanding the foregoing, the Parties shall attempt in good faith to cure any perceived defects in the Settlement to facilitate approval.
3. **Waiver:** The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.
4. **Parties' Authority:** The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.
5. **Mutual Full Cooperation:** The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Plaintiff's Counsel shall, with the assistance and cooperation of Defendant and Defendant's counsel, take all necessary steps to secure the Court's approval of the settlement, and the Final Order.
6. **No Prior Assignments:** The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Settlement Agreement.
7. **No Admission:** Defendant denies any and all liability to Plaintiff and/or the PAGA Employees in this Lawsuit, as to any and all causes of action that were asserted or that might have been asserted in this Action. Nonetheless, Defendant desires to settle and compromise the matters at issue in the Operative Complaint to avoid further substantial expense and the inconvenience and distraction of protracted and burdensome litigation. Defendant also has taken into account the uncertainty and risks inherent in litigation and, without conceding any infirmity in the defenses that it has asserted or could

assert against Plaintiff and the PAGA Employees, have determined that it is desirable and beneficial that Plaintiff's and the PAGA Employees' claims be settled in the manner and upon the terms and conditions set forth in this Agreement.

8. **Binding Settlement:** Nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document and shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

9. **Enforcement Actions:** Except as otherwise provided in this Settlement Agreement, in the event that one or more of the Parties to this Settlement Agreement institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs incurred in connection with any enforcement actions.

10. **Notices:** All notices shall be provided by United States mail and electronic mail. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third calendar day after mailing by United States mail and electronic mail, addressed as follows:

To Plaintiff:

Scott E. Wheeler
Law Office of Scott E. Wheeler
250 West First Street, Suite 216
Claremont, California 91711
Tel: (909) 621-4988
Fax: (909) 621-4622
E-mail: sew@scottwheelerlawoffice.com

To Defendants:

MAGARIAN & DIMERCURIO, APLC
Mark D. Magarian
Krista L. DiMercurio
20 Corporate Park, Suite 255
Irvine, California 92606
Telephone: (714) 415-3412
Facsimile: (714) 276-9944
Email: mark@magarianlaw.com
Email: krista@magarianlaw.com

11. **Construction:** The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Settlement Agreement.

12. **Captions and Interpretations:** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

13. **Modification:** This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

14. **Choice of Law:** This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

15. **Integration Clause:** This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

16. **Binding On Assigns:** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

17. **Counterparts:** This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully-signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic delivery shall be deemed an original.

18. **Entire Agreement:** This Agreement sets forth the entire agreement between the Parties hereto and fully supersedes any and all prior and/or supplemental understandings, whether written or oral, between the Parties concerning the subject matter of this Agreement. Any modification to this Agreement must be in writing and signed by the Parties.

IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Settlement Agreement and Release as of the date set forth below.

Dated: 09 / 29 / 2022

PLAINTIFF

Salvador Gonz
Salvador Gonzalez

Dated: 10/3/2022

SUNNYSLOPE TREE FARM, INC.

DocuSigned by:
TODD FLAMMER
45572B4655DD426...

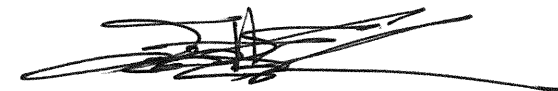
Name: TODD FLAMMER

Title: President

APPROVED AS TO FORM:

Dated: September 30, 2022

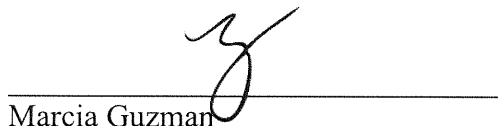
THE LAW OFFICE OF SCOTT E. WHEELER



Scott Ernest Wheeler

Dated: September 29, 2022

ATTORNEYS' FOR WORKERS RIGHTS


Marcia Guzman

Attorneys for Plaintiff and the Aggrieved
Employees

Dated: 10/3/2022

MAGARIAN & DIMERCURIO, APLC

DocuSigned by:
Mark D. Magarian
128B12ECP2847C...

Mark D. Magarian
Krista L. DiMercurio

Attorneys for Defendant Sunnyslope Tree Farm,
Inc.