

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (hereafter "AGREEMENT") is entered into by and among Plaintiff MICHELLE GARCIA-VIGIL (hereinafter referred to as "PLAINTIFF") and Defendants. MICHELLE GARCIA-VIGIL and Defendants WEST COAST CHILL, INC. and THE JOSEPH COMPANY INTERNATIONAL (hereafter "DEFENDANTS"). The parties to this agreement may sometimes be collectively referred to as "PARTIES".

RECITALS

WHEREAS, on or about June 14, 2016, PLAINTIFF filed suit against Defendants in Orange County Superior Court Case No. 30-2016-00857926-CU-OE-CJC (hereinafter the "ACTION");

WHEREAS, in exchange for, conditioned upon and in consideration of the mutual covenants and conditions contained in this AGREEMENT, PLAINTIFF is willing to release Defendants, the PARTIES hereby mutually agree as follows:

AGREEMENT

1. The foregoing recitals are incorporated by reference herein and made a part of this AGREEMENT.
2. Defendants WEST COAST CHILL, INC. and THE JOSEPH COMPANY INTERNATIONAL agrees to pay to PLAINTIFF the sum of \$50,000.00, to be paid in payments as follows:
 - a. \$10,000.00 on June 1, 2018, or within ten (10) days of the Court's approval of the parties' settlement of the PAGA claims; and
 - b. \$8,000.00 per month for five (5) months starting July 1, 2018, through November 1, 2018
3. \$1,000.00 OF THE \$50,000.00 WILL BE ALLOCATED TO PLAINTIFF'S PAGA CLAIM, and a request for dismissal without prejudice shall be filed as to the PAGA claims of any other aggrieved employees. After PLAINTIFF receives the full \$50,000.00 from DEFENDANTS, PLAINTIFF shall distribute \$750.00 to the State of California for its 75% of the PAGA settlement payment.
4. PLAINTIFF shall defend, indemnify and hold harmless from any tax claim arising out of the payment made.
5. DEFENDANTS' payments are to be made by check and shall be made payable to the Client Trust Account of the Law Offices of Carlin & Buchsbaum LLP and delivered to PLAINTIFF'S attorney to the Law Offices of Carlin & Buchsbaum LLP at 555 East Ocean Blvd., Suite 818, Long Beach, CA 90802. Said payments shall be secured by the Stipulation for Entry of Judgment (hereinafter "STIPULATION") executed concurrently with this AGREEMENT, which includes a provision for entry of judgment against DEFENDANTS for the sum of \$50,000.00 (less payments made pursuant to the STIPULATION) in the event of default.

6. Upon execution of this AGREEMENT and the STIPULATION, PLAINTIFF shall file a dismissal of the ACTION without prejudice. If DEFENDANTS default in any of the payments provided for in paragraph 2 above, which default is not cured within ten (10) calendar days after written notice to Scott Berger, Executive Vice President of Joseph Company International 1711 Langley Ave., Irvine, CA 92614 (949-474-2200); and to Matthew W. Johnson of Murtaugh Treglia Stern & Deily 2603 Main Street Penthouse, Irvine, CA 92614 (949-794-4000), of such default PLAINTIFF may apply to the court, ex parte, without the necessity of a noticed motion and upon the declaration of Plaintiff's counsel, to vacate the dismissal of the above entitled action and have judgment entered pursuant to CCP §664.6 in the amount of \$50,000, less any payments made by DEFENDANTS hereunder as provided for in the form of the Judgment;

7. Upon DEFENDANTS' payment of the full sums due under the STIPULATION, PLAINTIFF will file a dismissal of the ACTION with prejudice.

8. Except as to the terms of this AGREEMENT, the PARTIES jointly and mutually, to the full extent that its execution hereof renders it legally possible, for themselves and their respective successors, assigns, agents, representatives, heirs, parents and attorneys, or anyone else acting on their behalf release and forever discharge the other Party, and each of its present and former officers, agents, directors, supervisors, employees, representatives, attorneys, parents, subsidiaries, affiliates, business partners, contractors, and their predecessors, successors and assigns ("Releases") from any and all complaints, claims and liabilities of any kind or nature whatsoever, of every kind and nature whatsoever, known or unknown, fixed or contingent, including any and all rights to subrogation therefore, arising out of and/or connected with their prior relationship and the AGREEMENT (the "Released Matters"). In addition, the PARTIES mutually covenant not to bring any claim or lawsuit against the other PARTY for any claim or liability of any kind or nature released under this AGREEMENT, except for the purpose of enforcing this AGREEMENT. It is expressly understood, acknowledged and agreed that this is a full and final settlement and release applying to all known and unknown or unanticipated claims, causes of action, injuries, losses, damages, or rights arising out of said claim, dispute or controversy described herein.

9. The parties agree to execute any further documents which may be required in order to effect the provisions of this AGREEMENT.

10. Each party shall bear their own attorney's fees and costs herein. However if legal action is necessary to enforce this AGREEMENT or resolve any dispute under this AGREEMENT, the prevailing party in any such action shall be entitled to attorney's fees and costs in addition to any other relief that may be awarded.

11. PLAINTIFF agrees to strict confidentiality as to the terms of the SETTLEMENT, allegations made in the case, the amount paid, all of this AS OF THE DATE OF THE SETTLEMENT and on a going forward basis. Only exceptions: PLAINTIFF can tell her lawyers, can tell her husband (however, PLAINTIFF will be responsible for any disclosure made by her husband), to enforce the settlement, to get tax advice, to file tax returns, if required by law or it is ordered by a court of law. Any alleged breach of confidentiality will be prosecuted in a confidential binding arbitration before Judge Romero, the mediator, who agrees to do it on a pro bona basis, and his ruling shall be final and binding and not subject to any appeal. In addition, the parties waive any disclosure that needs to be made by Judge Romero in order to have an expedited arbitration. Also, because it would be difficult, if not impossible to ascertain damages arising out of a breach, the parties stipulate that liquidated damages in the amount of \$3,000.00 will be awarded for each breach proven by the preponderance of evidence and

also that reasonable fees and costs shall be awarded to the prevailing party. PLAINTIFF'S counsel agree that they will not disclose the SETTLEMENT to any third person/party and agree not to publicize it in any forum or form;

12. PLAINTIFF agrees that she will not voluntarily cooperate with the prosecution of any claim brought by any alleged former, current or future employee of DEFENDANTS without a lawfully issued subpoena and will notify DEFENDANTS' counsel in writing within three (3) business days if a subpoena is issued so that DEFENDANTS can decide if it will move to quash the subpoena.

13. PLAINTIFF will not encourage nor solicit any former, current or future employees of DEFENDANTS to sue DEFENDANTS.

14. PLAINTIFF agrees that she will never seek employment with DEFENDANTS, and DEFENDANTS agree to give all prospective employers of PLAINTIFF "neutral reference," that is all that will be disclosed will be period of employment and last position held. DEFENDANTS will allow PLAINTIFF to treat her termination as a voluntary resignation only for the purpose of seeking employment and no other reason.

15. *Civil Code §1542.* Subject to the exceptions set forth in this AGREEMENT, it is the intention of the Parties in executing this AGREEMENT that this AGREEMENT shall be effective as a full and final accord and satisfaction and release of and from all liabilities, disputes, claims and matters known or unknown, suspected or unsuspected, of the Releases. In furtherance of this intention, the PARTIES acknowledge that they have been advised by legal counsel and that they are familiar with the provisions of California *Civil Code §1542*, which provides as follows:

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.

16. The PARTIES waive and relinquish any right or benefit which each has or may have under California *Civil Code Section 1542* or any similar provision of the statutory or nonstatutory law of any other jurisdiction to the full extent that each may lawfully waive all such rights and benefits pertaining to the subject matter of this AGREEMENT. In connection with such waiver and relinquishment, the PARTIES acknowledge that each is aware that it, or its attorneys, may hereafter discover claims or facts in addition to or different from those which it now knows or believes to exist with respect to the subject matter of this AGREEMENT, but that it is each PARTY's intention hereby fully, finally and forever to settle and release all of the Released Matters, disputes and differences, known or unknown, suspected or unsuspected, which now exist, may exist, or heretofore have existed between the PARTIES. In furtherance of this intention, the releases herein given shall be and remain in effect as full and complete general mutual releases notwithstanding the discovery or existence of any such additional or different claims or facts.

17. This AGREEMENT shall be deemed to have been executed and delivered in the State of California, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California, without regard to conflict of laws rules or provisions.

18. This AGREEMENT contains the entire, complete and integrated statement of each and every term and provision agreed to by and among the PARTIES and is not subject to any condition not provided for herein. This AGREEMENT supersedes all prior and contemporaneous oral and written agreements and communications between or among the PARTIES regarding the subject matter hereof. This AGREEMENT may be amended only by an agreement in writing executed by all of the PARTIES hereto. The failure by any party hereto to insist upon strict performance of any of the terms or conditions of this AGREEMENT shall not be deemed a waiver of any of the rights or remedies that such party may have, and shall not be deemed a waiver of any subsequent breach or default. To be effective, any waiver with regard to this AGREEMENT must be in writing and signed by the Party granting the waiver, and any such waiver shall apply only to the matter or instance specifically waived.

19. The determination by any arbitration or court of competent jurisdiction that any term or provision of this AGREEMENT is wholly or partially illegal, invalid or unenforceable in any situation, shall not affect the legality, validity and enforceability of the remaining parts, terms or provisions, or the legality, validity or enforceability of the offending term or provision or portion thereof in any other situation unless to do so would destroy the essential purpose of this AGREEMENT.

20. This AGREEMENT is executed voluntarily and without any duress or undue influence on the part or behalf of the PARTIES hereto, with the full intent of releasing all claims. The PARTIES acknowledge that:

(a) They have read this Settlement Agreement;

(b) They have had the opportunity to be represented in the preparation, negotiation, and execution of this Settlement Agreement by legal counsel of their own choice;

(c) They understand the terms and consequences of this Settlement Agreement and of the releases it contains.

21. This AGREEMENT may be executed by facsimile, email, and/or in counterparts, each of which facsimile or counterpart when so executed shall be deemed an original and all of which taken together shall constitute one Agreement which shall be binding upon and effective as to all Parties.

22. This AGREEMENT shall not be construed against the party preparing it, but shall be construed as if all parties jointly prepared this and any uncertainty or ambiguity should not be interpreted against anyone party.

Date: May __, 2018

MICHELLE GARCIA-VIGIL

Date: May __, 2018

WEST COAST CHILL, INC.
By:

Date: May __, 2018

THE JOSEPH COMPANY INTERNATIONAL
By: