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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

JOSE TORRES, in a Representative capacity
only, and on behalf of other members of the
general public similarly situated,

Plaintiff,

v.

KOVATCH MOBILE EQUIPMENT
CORP., a Pennsylvania Corporation; REV
GROUP INC., a business entity, form
unknown, and DOES 1 - 10, inclusive,

Defendant.

Case No. 37-2019-00042237-CU-OE-CTL

*Assigned for all purposes to the Hon. Gilbert
Ochoa, Dept. S24*

**SETTLEMENT AGREEMENT AND
RELEASE OF PAGA CLAIMS**

1 **SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS**

2 Plaintiff Jose Torres (“Plaintiff”), individually and in his capacity as a representative of the
3 State of California on behalf of other aggrieved employees, and Defendants Kovatch Equipment
4 Corp. and REV Group, Inc. (“Defendants”), enter into this Settlement Agreement and Release of
5 PAGA Claims (“Settlement”) as follows:

6 **I. DEFINITIONS**

7 As used in this Settlement, these terms shall have these meanings:

8 “Action” means this action, which Plaintiffs filed in the San Bernardino County Superior
9 Court, Case No. CIVDS2012407

10 “Defendants” means Defendants Kovatch Equipment Corp. and REV Group, Inc.

11 “Defense Counsel” means Grace Horoupian and Benjamin Taylor of Fisher & Phillips, LLP.

12 “Effective Date” of the Settlement means the date upon which both the following have
13 occurred: (i) approval of the Settlement is granted by the San Bernardino County Superior Court or
14 other court assuming jurisdiction of this matter, and (ii) the Court’s Judgment approving the
15 Settlement becomes Final.

16 “Final” shall mean the latest of: (i) if there is an appeal of the Court’s Judgment, the date the
17 Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to
18 file a petition for review to the California Supreme Court; (ii) if a petition for review is filed, the date
19 of denial of the petition for review, or the date the Judgment is affirmed pursuant to such petition; or
20 (iii) if no appeal is filed, the day that the Court approves the PAGA Settlement and then enters
21 Judgment.

22 “LWDA” means the California Labor & Workforce Development Agency.

23 “PAGA” means the California Labor Code Private Attorneys General Act of 2004, codified
24 at California Labor Code §§ 2698 *et seq.*

25 “PAGA Notice(s)” means the letters Plaintiff filed with the LWDA on behalf of himself and
26 all other aggrieved employees alleging Defendants committed certain violations of the California
27 Labor Code.

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1 “PAGA Period” means the time period from April 18, 2019 through the Effective Date.

2 “PAGA Settlement Members” means all non-exempt employees who worked in California
3 for Defendants during the PAGA Period. Defendants represent there are approximately 28 PAGA
4 Settlement Members.

5 “Plaintiff” means Jose Torres, individually and in his capacity of a representative of the State
6 of California on behalf of other aggrieved employees.

7 “Plaintiff Counsel” means William B. Sullivan and Eric K. Yaeckel of Sullivan & Yaeckel
8 Law Group, APC.

9 “Parties” means Plaintiffs and Defendants.

10 “Released Claims” means all claims or causes of action for civil penalties, attorney fees, or
11 costs recoverable under PAGA alleged in the Action, or that could have been alleged in the Action,
12 that are based on alleged meal and rest breaks, meal and rest break premiums, minimum wage,
13 overtime compensation, wage statements, unreimbursed business expenses, and final pay violations,
14 and any resulting claims for penalties under PAGA alleged to have been violated in the Action
15 through the Date of Settlement Approval.

16 “Released Parties” means Defendants and all of their past and present owners, officers,
17 directors, shareholders, employees, agents, assigns, attorneys, insurers, parent companies,
18 subsidiaries, and affiliates, and their respective predecessors, successors, and assigns.

19 “Settlement Administrator” means CAC Services, LLC.

20 **II. RECITALS**

21 A. On January 23, 2020, Plaintiff’s Counsel sent a letter to the LWDA on behalf of
22 Plaintiff under California Labor Code § 2699.3. Plaintiff sought to represent himself and all PAGA
23 Settlement Members. At no time did the LWDA indicate its intention to investigate the alleged
24 violations referenced in the letter.

25 B. Thereafter, Plaintiff Counsel commenced this Action by filing a civil lawsuit alleging
26 the violations set forth in the PAGA Notices as grounds for recovering civil penalties.

27 C. The Parties subsequently agreed to engage in arms-length settlement negotiations.
28 The Parties engaged in extensive formal and informal discovery prior to the settlement. The Parties

1 also engaged in extensive settlement negotiations, which involved substantial offers and
2 counteroffers between the Parties.

3 D. Counsel for all Parties have thoroughly investigated the facts relating to the claims
4 alleged in the operative Complaint and made a thorough study of the legal principles applicable to
5 the claims asserted against Defendant. Plaintiff's Counsel concluded the Settlement is fair,
6 reasonable, and adequate in light of all known facts and circumstances, including the defenses
7 asserted by Defendant, potential adverse findings regarding liability, and numerous potential
8 appellate issues.

9 E. Defendants deny, and continue to deny, each and every claim and contention alleged
10 in the PAGA Notices, and have always maintained that they never engaged in any unlawful acts
11 regarding any of the matters alleged in the PAGA Notices.

12 NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions set
13 forth, the Parties agree as follows:

14 **III. NON-ADMISSION OF LIABILITY**

15 Based on the factual and legal issues involved, the expense and time necessary to prosecute
16 the Action through trial, the risks, uncertainty, and costs of further prosecution, the financial status
17 of Defendants, the difficulty of proof necessary to establish a class or manageable group for purposes
18 of liability, and the relative benefits to the PAGA Settlement Members of an expeditious resolution
19 to the Action, the Parties have concluded that the terms set forth in this Settlement are fair,
20 reasonable, adequate, and in the best interests of the PAGA Settlement Members.

21 By entering into this Settlement, Defendants deny any liability for any of the claims in the
22 Action, as well as any other potential or unknown claims based on wage and hour violations under
23 California or federal law. Neither this Settlement, nor any document referred to or contemplated
24 herein, nor any action taken to carry out this Settlement, may be construed as, or may be used as, an
25 admission, concession, or indication by or against Defendants of any unlawful conduct, fault,
26 wrongdoing or liability whatsoever. Defendants specifically deny that they have engaged in any
27 unlawful or wrongful conduct against Plaintiffs or the PAGA Settlement Members.

1 **IV. TERMS OF THE PAGA SETTLEMENT**

2 **A. Gross Settlement Amount**

3 Defendants shall pay a non-reversionary monetary settlement payment in a total amount not
4 to exceed \$35,000.00 (“Gross Settlement Amount”). The Gross Settlement Amount is the maximum
5 amount Defendants can be required to pay under this Settlement. Defendants shall submit the Gross
6 Settlement Amount to the Settlement Administrator within ten (10) business days of the Effective
7 Date (“Final Payment Date”), provided the Settlement Administrator has given Defendants a
8 completed form W-9.

9 **B. Settlement Administrator Fees and Costs**

10 The Settlement Administrator shall calculate and distribute payments to individual PAGA
11 Settlement Members and to the LWDA. The Settlement Administrator will skip-trace and re-mail all
12 returned, undeliverable mail within seven days of receiving notice that the mailing was
13 undeliverable. The Settlement Administrator will also handle payment of Plaintiff Counsel’s costs
14 as approved by the Court. Settlement Administrator’s Fees are estimated to be \$4,000 and are to be
15 paid from the Gross Settlement Amount.

16 **C. Attorneys Fees and Costs**

17 Subject to Court approval, a total of up to one-third of the settlement amount (\$11,666.67)
18 shall be allocated as Plaintiff’s attorneys fees. An additional \$4,000 shall be allocated as costs. The
19 payment for costs will be issued via an IRS Form 1099. The Settlement Administrator will issue the
20 payment to Plaintiff’s Counsel.

21 **D. PAGA Fund**

22 After the costs of settlement administration and the attorneys costs are deducted, the balance
23 will total approximately \$15,333.33 and shall be allocated toward payment to the LWDA and
24 PAGA Settlement Members (“PAGA Fund”). 75% of the PAGA Fund will be sent to the LWDA
25 and 25% of the PAGA Fund will be allocated among the PAGA Settlement Members
26 based on the proportionate number of pay periods during the PAGA Period as set forth in Section
27 V.B., *infra*.

1 **V. COMPUTATION AND DISTRIBUTION OF PAGA FUND**

2 **A. Payment of PAGA Fund**

3 Within 30 days after the Final Payment Date, the Settlement Administrator shall distribute
4 the PAGA Fund to the LWDA and to the PAGA Settlement Members. Payments to PAGA
5 Settlement Members shall be made via U.S. Mail to their last known addresses.

6 **B. Formula for Calculating Share of PAGA Fund**

7 The portion of the PAGA Fund to be paid to each PAGA Settlement Member shall be
8 determined based on this formula:

9 The payments to PAGA Settlement Members will be based on the number of pay periods for
10 each PAGA Settlement Member during the PAGA Period. The value of a pay period will be
11 calculated by dividing the portion of the PAGA Fund paid to PAGA Settlement Members by the total
12 number of pay periods for all PAGA Settlement Members during the PAGA Period. The resulting
13 value will then be multiplied by the number of pay periods for each PAGA Settlement Member to
14 calculate the individual PAGA payment ("Individual Payment"). Defendant's records shall be
15 determinative for purposes of calculating the number of pay periods and any payments to PAGA
16 Settlement Members.

17 **C. Distribution of PAGA Fund**

18 The Settlement Administrator shall pay an amount equivalent to 75% of the PAGA Fund to
19 the LWDA, or as otherwise directed by the Court. A copy of the check that the Settlement
20 Administrator mails to the LWDA shall be provided to Plaintiff's Counsel within five days of
21 mailing.

22 The Settlement Administrator shall also distribute each Individual Payment to each PAGA
23 Settlement Member, or as otherwise directed by the Court, by postmarked First Class U.S. Mail. The
24 Settlement Administrator shall maintain a list of the postmarked dates for the original mailing of
25 each Individual Payment to the PAGA Settlement Members and a list of PAGA Settlement Members
26 who did not receive the Individual Payment, if any, due to the inability to locate a valid address.

27 All settlement checks will remain valid and negotiable for 180 days from the date of their
28 execution. After 180 days, any uncashed checks will be void and escheat to the State of California

Department of Industrial Relations, Unclaimed Wages Fund in the names of the PAGA Settlement Members who did not cash such checks.

The Settlement Administrator will prepare and issue IRS Form 1099s to PAGA Settlement Members who received an Individual Payment.

VI. RELEASE OF CLAIMS

A. Claims Release by the LWDA and PAGA Settlement Members

Upon the Effective Date, the LWDA and PAGA Settlement Members, including Plaintiff, fully release and forever discharge the Released Parties from any and all Released Claims during the PAGA Period. The Parties agree that the settlement of this Action shall be effective as a full and final accord and satisfaction, settlement of, and as a bar to, the PAGA Claims alleged, or that could have been alleged, by Plaintiffs against Defendant arising out of the facts, circumstances, and primary rights in the PAGA Notice, including but not limited to claims for meal break violations, rest break violations, failure to pay minimum wage and overtime, wage statement violations, failure to reimburse business expenses, failure to timely pay wages and waiting time penalties. The Parties further agree the settlement of this Action shall be binding on Plaintiffs, the PAGA Settlement Members, the LWDA, the State of California, Defendants, and the Released Parties. As a result of this release, the PAGA Settlement Members will be unable to bring a claim under, or recover in any other claim brought under, the California Private Attorneys General Act, California Labor Code §§ 2698 *et seq.*, for any violations of the Released Claims that took place during the PAGA Period.

B. Claims Release by Plaintiff

Plaintiff will be deemed, upon the Effective Date, to have released the Released Parties of and from all of the Released Claims.

In further consideration of the above, and the benefit of this Agreement, Plaintiff unconditionally, irrevocably, and absolutely releases and discharges Defendants, and the Released Parties, from all losses, liabilities, claims, charges, demands and causes of action, known or unknown, suspected or unsuspected, arising directly or indirectly out of or in any way connected with the transactions and occurrences between the Parties, including Plaintiff's employment with Defendants. Notwithstanding the foregoing, the Parties agree and acknowledge that nothing in this

1 Agreement releases or waives any rights or claims Plaintiff have or may have regarding: (i) benefits,
2 or rights to seek benefits, under applicable workers' compensation and/or unemployment insurance;
3 (ii) those which, by law, cannot be waived by signing this Agreement; or (iii) to enforce this
4 Agreement. Barring those excluded rights, this release should have the broadest possible application
5 and includes, but is not limited to, all torts, contract, common law, constitutional or other statutory
6 claims, and all claims for attorney fees, costs, and expenses. This release includes any claim for
7 personal recovery of any type, including damages or reinstatement, due to alleged employment
8 discrimination and retaliation arising under federal, state, or local law, including the California Fair
9 Employment & Housing Act, the California Family Rights Act, the Americans With Disabilities Act,
10 the Family and Medical Leave Act, and Title VII of the Civil Rights Act of 1964. This release further
11 applies to any claims arising out of or based on the Rehabilitation Act of 1973, the California Labor
12 Code, other local and/or applicable wage ordinances and statutes, and the California Business &
13 Professions Code. This release includes any claims for any tortious conduct, wrongful discharge, and
14 wrongful discharge in violation of public policy.

15 Plaintiff's releases set forth herein include a waiver of all rights under California Civil Code
16 § 1542, which provides:

17 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
18 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
19 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
20 **THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD**
21 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH**
22 **THE DEBTOR OR RELEASED PARTY.**

23 Upon the Effective Date, Plaintiff will be deemed to have waived his rights under Civil Code
24 § 1542. Such Released Claims include all known and unknown claims that were or could have been
25 alleged under any state or federal law (save for those expressly excluded above) and arising out of
26 the facts, circumstances, and primary rights in the Complaint.

27 **C. Tax Treatment and Indemnification**

28 PAGA Settlement Members, including Plaintiff, will assume any tax obligations or
consequences that may arise from this Settlement. PAGA Settlement Members release any and all
claims they have or may have against Defendants or Released Parties for any claims, demands,

1 deficiencies, levies, assessments, executions, judgments, penalties, taxes, indemnification, and any
2 other recoveries related to any payments made under this Settlement or any compensation provided
3 at any time by Defendants or any of the Released Parties. The PAGA Settlement Members shall not
4 contact Defendants, any of the Released Parties, or Defense Counsel.

5 **VII. MISCELLANEOUS PROVISIONS**

6 **A. Mutual Full Cooperation**

7 Plaintiff, Defendants, Plaintiff Counsel, and Defense Counsel agree to cooperate fully with
8 each other to accomplish the terms of this Settlement, including, but not limited to, execution of such
9 documents, and to take such other action as may reasonably be necessary to implement the terms
10 herein. The Parties agree to use their best efforts and any other efforts that may become necessary
11 by Order of the Court, or otherwise, to effectuate this Settlement.

12 **B. Parties' Authority**

13 The signatories hereto represent they are authorized to enter into this Settlement.

14 **C. Binding Nature of the Settlement**

15 This Settlement shall be binding upon, and inure to the benefit of, the successors or assigns
16 of the Released Parties. Plaintiff represents, covenants, and warrants he has not directly or indirectly,
17 assigned, transferred, or encumbered any claim, demand, action, cause of action, or rights released
18 in the Released Claims in this Settlement. This Settlement shall be binding upon Plaintiff and the
19 PAGA Settlement Members. This Settlement may be amended or modified only by a written
20 instrument signed by Plaintiff and Defendants' duly authorized representatives. No rights under this
21 Settlement may be waived except in writing.

22 **D. Joint Drafting of Settlement Documents**

23 The Parties have arrived at this Settlement as a result of a series of arm's-length negotiations,
24 taking into account all relevant factors, present and potential. This Settlement has been drafted jointly
25 by Plaintiff Counsel and Defense Counsel and, therefore, in any construction or interpretation of this
26 Settlement, the same shall not be construed against any of the Parties.

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PLAINTIFFS AND PLAINTIFF COUNSEL

DATED: August 30, 2021

Jose Torres
Plaintiff Jose Torres

Approved as to form:

DATED: August 31, 2021

SULLIVAN & YAECKEL LAW GROUP, APC

By: [Signature]
Eric K. Yaeckel
Attorney for Plaintiff

DEFENDANTS AND DEFENSE COUNSEL

Kovatch Mobile Equipment Corp.

DATED: August _____, 2021

By: _____
Its: _____
REV Group, Inc.

DATED: August _____, 2021

By: _____
Its: _____

Approved as to form:

DATED: August _____, 2021

FISHER & PHILLIPS LLP

By: _____
Grace Horoupian
Attorneys for Defendants