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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

TYLER NUNALEY, an individual and on
behalf of all other aggrieved employees,

Plaintiff,

v.

SIZEWISE RENTALS LLC, DOES 1-50
inclusive,

Defendants.

Case No. CGC-20-587743

**[PROPOSED] ORDER GRANTING
MOTION FOR APPROVAL OF PAGA
SETTLEMENT AND ENTRY OF
JUDGMENT**

1 The Court has considered MOTION FOR APPROVAL OF SETTLEMENT AND ENTRY OF
2 JUDGMENT, including the Settlement Agreement, and the record in this action (“the
3 Litigation”). The matter having been submitted and good cause appearing,

4 IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

5 1. All defined terms contained herein shall have the same meaning as set forth in the
6 Settlement Agreement and the MOTION FOR APPROVAL OF SETTLEMENT AND ENTRY
7 OF JUDGMENT. The Labor Code Private Attorneys General Act, codified at California Labor
8 Code section 2698 et sec. is referred to herein as “PAGA.”

9 2. The Action consists of (a) a representative action by Tyler Nunaley (the “PAGA
10 Representative”) against Sizewise Rentals LLC (“Sizewise”) under PAGA for penalties on behalf
11 of the State of California and all current and former non-exempt employees of Sizewise employed
12 as non-exempt employees, and substantially similar roles from May 21, 2019 through the date
the Court grants approval of the Settlement.

13 3. The Court has jurisdiction over the subject matter of the Litigation, the PAGA
14 Representatives, the Aggrieved Employees, and Sizewise. This Judgment shall be binding not
15 only on the named parties to the litigation but also on all Aggrieved Employees and the State of
16 California, who are hereby barred by the doctrine of res judicata from re-litigating the Released
17 Claims. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009) (holding that a judgment in a
18 representative action brought by an aggrieved employee under PAGA is binding not only on the
19 named employee Plaintiff but also on state labor law enforcement agencies and any aggrieved
employee not a party to the proceeding).

20 4. In accordance with the Settlement Agreement, which the Court hereby approves
21 based on good cause showing for the reasons set forth in the Motion for Approval of PAGA
22 Settlement and with no objection received from the LWDA: (a) The Gross Settlement Amount
23 under this Settlement Agreement is Ten Thousand Dollars (\$10,000.00), which includes any and
24 all payments that shall be made pursuant to the PAGA to the Labor Workforce Development
25 Agency, the Aggrieved Employees and all third-party costs of settlement administration; (b)
26 ILYM Settlement Administrators is hereby approved to administer this Settlement; and (c) the
27 LWDA and all Aggrieved Employees are hereby permanently enjoined from pursuing, or seeking
28 to reopen, any Released Claims against any Released Parties.

1 5. The Court order that the PAGA Aggrieved Employees will receive a notice with
2 their settlement check regarding the nature of the payment. The proposed notice attached as
3 Exhibit 7 to the Supplemental Declaration of John Glugoski is approved as to form, adopted by
4 the Court and ordered to be mailed by the Settlement Administrator along with the settlement
5 checks.

6 6. The Court approves the payment of \$2,5000 to Settlement Administrator ILYM
7 for their work in administering the settlement. The remaining \$7,500 shall be paid to the LWDA,
8 and the Aggrieved employees with 75% going to the LWDA and the remaining 25% to the
9 Aggrieved Employees. The Court understands and accepts Plaintiff's counsel waiver of any right
10 to seek fees or costs as part of this PAGA settlement.

11 7. Should there be any residual funds from uncashed settlement checks that expire,
12 the Court orders that said funds be paid to a cy pres. The Court approves and appoints
13 _____ as the cy pres beneficiary of any residual funds from expired uncashed
14 settlement checks.

15 8. Pursuant to PAGA and Labor Code section 2699(l) in particular, the Court
16 approves the Settlement and finds that it is fair, just, reasonable and adequate. The Settling Parties
17 are directed to perform their duties in accordance with the terms set forth in the Settlement
18 Agreement.

19 9. All of the Released Claims are deemed adjudicated and extinguished with
20 prejudice as to the PAGA Representative, all of the other Aggrieved Employees, and the State of
21 California.

22 10. Settlement Administrator shall make the payments to the LWDA, the Aggrieved
23 employees, and to the Settlement Administrator as provided for in the Settlement Agreement.

24 11.

25 12. The Court finds that, under California law (which is applicable here), class action
26 procedural rules are not required when litigating representative PAGA actions. (See *Arias v.*
27 *Superior Court* (2009) 46 Cal.4th 969.) The differences between a traditional class action and a
28 PAGA suit are well summarized in *Sakkab v. Luxottica Retail North America, Inc.*, 803 F.3d 425,
435-436 (9th Cir. 2015) *en banc review denied* (2016). Following the California Supreme
Court's decision in *Iskanian v. CLS Transportation*, 59 Cal.4th 348 (2014), the Ninth Circuit
explained:

1 The class action is a procedural device for resolving the claims of absent parties
2 on a representative basis. See Fed.R.Civ.P. 23; *Ortiz v. Fibreboard Corp.*, 527
3 U.S. 815, 832- 33 (1999); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613-
4 17 (1997). By contrast, a PAGA action is a statutory action in which the
5 penalties available are measured by the number of Labor Code violations
6 committed by the employer. An employee bringing a PAGA action does so "as
7 the proxy or agent of the state's labor law enforcement agencies," *Iskanian*, 59
8 Cal.4th at 380 (quoting *Arias v. Superior Court*, 46 Cal.4th 969, 986 (2009)),
9 who are the real parties in interest, *see id.* at 382. As the state's proxy, an
10 employee-plaintiff may obtain civil penalties for violations committed against
11 absent employees, Cal. Lab.Code § 2699(g)(1), just as the state could if it
12 brought an enforcement action directly. However, by obtaining such penalties,
13 the employee-plaintiff does not vindicate absent employees' claims, for the
14 PAGA does not give absent employees any substantive right to bring their
15 "own" PAGA claims. *See Amalgamated Transit Union. Local 1756, AFL-CIO v.*
16 *Superior Court*, 46 Cal. 4th 993. 1003 (2009); *see also Iskanian*, 59 Cal.4th at
17 381 (explaining that "[t]he civil penalties recovered on behalf of the state under
18 the PAGA are distinct from the statutory damages to which employees may be
19 entitled in their individual capacities").

20 *Sakkab, supra* at 435-436.

21 13. The Court finds that the notice requirements and other procedures applicable to
22 class action settlements do not apply to the settlement approval process for this PAGA Action.

23 14. The Court further finds that Plaintiff's counsel has sufficiently demonstrated that
24 notice of the Settlement has been provided to the LWDA as required by PAGA and Labor Code
25 section 2699, subdivision (1)(2), in particular.

26 15. Neither the Settlement Agreement nor any act performed or document executed
27 pursuant to or in furtherance of the Settlement (a) is or may be deemed to be or may be used as
28 an admission of, or evidence of, the validity of any Released Claims, or of any wrongdoing or
liability of the Released Parties, or any of them; or (b) is or may be deemed to be or may be used
as an admission of, or evidence of, any fault or omission of the Released Parties, or any of them,
in any civil, criminal or administrative proceeding in any court, administrative agency or other
tribunal. Sizewise Rentals LLC or any of the Released Parties may file the Settlement and/or the
Judgment from this Litigation in any other action that may be brought against it or them in order
to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel,
release, good faith settlement, judgment bar or reduction or any theory of claim preclusion or
issue preclusion or similar defense or counterclaim.

16. The Court dismisses the action but reserves exclusive and continuing jurisdiction

1 over the Action, the PAGA Representative, the Aggrieved Employees and Sizewise Rentals LLC
2 for the purposes of supervising the implementation, enforcement, construction, administration
3 and interpretation of the Settlement Agreement and this Judgment.

4 **IT IS SO ORDERED AND ADJUDGED.**

5
6 Dated: _____

7 Hon. Ethan P. Schulman
8 Judge of the Superior Court
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