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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

JEFFREY FARINAS, ZACHARY
COVARRUBIAS, and AUSTIN SCOTT on
behalf of the general public as private
attorney general,

Plaintiff,

v.

PACIFICA HOTEL COMPANY, a California
Corporation, and DOES 1 through 50,
inclusive

Defendants

Case No. 37-2019-00031699-CU-OE-CTL
Hon. Richard S. Whitney
Department C-68

**[PROPOSED] ORDER AND
JUDGMENT APPROVING
SETTLEMENT OF PRIVATE
ATTORNEYS GENERAL ACT
CLAIMS**

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Kristin Sorianosos, Deputy Clerk

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Plaintiffs seek civil penalties on behalf of the State of California and similarly situated aggrieved employees, as authorized by PAGA under Labor Code § 2699, in relation to alleged violations of the predicate statutes set forth in Plaintiffs' Complaints and their respective letters to the Labor Workforce and Development Agency "LWDA") (the "LWDA Letter"), on behalf of all current and former non-exempt employees of Defendant Pacifica Hotel Company who (i) were employed as a guest services employee at any time from April 8, 2018 through the Effective Date and/or (ii) were employed in service-related positions wherein they were eligible to and received payment for a service charge at any time from May 21, 2019 through the Effective Date ("Aggrieved Employees").

1. The Court finds the instant Action presents a good faith dispute of the claims alleged;
2. The Court finds in favor of settlement approval, and therefore approves the Settlement of the above-captioned actions, as set forth in the Settlement Agreement and each of the releases and other terms, as fair, just, reasonable, and adequate;
3. The Court finds further that Plaintiffs, acting on behalf of themselves and the State of California, by operation of this Order hereby release and forever discharge Defendant and the

1 Released Parties (as defined in the Settlement Agreement) from any and all PAGA Released Claims
2 (as defined in the Settlement Agreement) including penalties asserted in Plaintiffs' respective
3 Complaints, including any and all known and unknown claims for civil penalties under the Private
4 Attorneys General Act, California Labor Code §§ 2698, *et seq.*, that arise.

5 4. The terms of the Settlement Agreement, and this Order and Judgment, shall be binding
6 on Plaintiffs, the State of California, and the Aggrieved Employees, as well as their heirs, executors and
7 administrators, successors and assigns, and those terms shall have res judicata, collateral estoppel and
8 other preclusive effect in all pending and future claims, lawsuits or other proceedings maintained by or on
9 behalf of any such persons or entities, to the extent those claims, lawsuits or other proceedings constitute
10 PAGA Released Claims as set forth in the Settlement Agreement. Upon entry of this Order, the
11 Court hereby enters judgment, for the reasons described above and in accordance with the
12 terms of the Settlement Agreement. Upon entry of this Order, the Court permanently enjoins
13 and forever bars Plaintiffs, the State of California, and the Aggrieved Employees from
14 instituting or prosecuting the PAGA Released Claims, as defined in the Settlement Agreement,
15 against Defendant or the Released Parties. Except as otherwise provided in this Order and the
16 Settlement Agreement, all parties shall bear their own attorneys' fees, costs, and expenses
17 incurred by them in or arising out of the lawsuit and shall not seek reimbursement thereof from
18 the Released Parties. Upon Defendant's satisfaction of its financial obligations under this
19 approval order, Plaintiffs, all Aggrieved Employees, and the State of California shall fully
20 release and forever discharge any and all claims against the Released Parties arising during the
21 Settlement Period for civil penalties under California Labor Code sections 2698-2699 that were
22 asserted or could reasonably have been asserted based on the facts alleged or that could have
23 been alleged in the Actions and/or the PAGA letters submitted by Farinas, Scott, Gomez,
24 and/or Covarrubias to the LWDA ("Released Claims"), including but not limited to PAGA
25 penalties for violations of California Labor Code sections 201, 202, 203, 204, 210, 225.5, 226,
26 226.3, 226.7, 227.3, 256, 351, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197,
27 1197.1, 1198, 1199, 2802 and applicable IWC Wage Orders and California Code of
28 Regulations, Title 8, section 11000 *et seq.* "Released Parties" shall mean Defendant, its past

1 and present related entities, parents, subsidiaries, predecessors, successors, assigns, owners,
2 officers, directors, employees, agents, trustees, affiliated entities, attorneys or legal
3 representatives, insurers, fiduciaries, beneficiaries, partners, and/or any other entity or
4 individual which could be liable for the acts or omissions of Defendant in relation to the
5 Released Claims. Upon issuance of this approval order and judgment, Plaintiffs, all Aggrieved
6 Employees, and the State of California will be forever barred from pursuing against Defendant
7 and the Released Parties any and all claims for civil penalties pursuant to the PAGA under the
8 Labor Code sections described herein, Wage Orders, and/or other provisions of law alleged or
9 that could have been alleged to have been violated in the Actions with respect to the Aggrieved
10 Employees based on the facts alleged or that could have been alleged in the Actions arising
11 during the Settlement Period.

12 5. The Parties are directed to comply with all terms of the Settlement Agreement, and
13 Defendant is directed to make all payments required by the Settlement Agreement;

14 6. Under the Settlement Agreement, Defendant agrees to pay an all-in gross amount of six-
15 hundred sixty thousand dollars (\$660,000.00) (the "Maximum Settlement Amount"). The
16 Maximum Settlement Amount is inclusive of payments to the LWDA and Aggrieved Employees,
17 Attorney's Fees and Costs, and Administration Costs. No portion of the Maximum Settlement Amount
18 will revert to Defendant. Plaintiffs' Counsel request an award of attorney's fees of \$220,000.00 and
19 costs of \$23,790.82; and payment of settlement administrator Simpluris Inc., in administration costs of
20 (\$8,500.00), Defendant does not oppose these requests. The Court finds the Maximum Settlement
21 Amount is fair, reasonable and adequate, and approves each of these payments, and directs the
22 Settlement Administrator to make the above payments from the Maximum Settlement Amount.

23 7. After deducting the foregoing payments, the estimated remainder of approximately
24 \$416,209.17 shall form the PAGA Penalties Fund. Pursuant to Labor Code section 2699(i), the PAGA
25 Penalties Fund will then be distributed 75% percent (\$312,156.87) to the LWDA, and the remaining
26 25% percent (\$104,052.30) to the Aggrieved Employees on a pro rata basis, as set forth in the Settlement
27 Agreement. The Court approves these payments, and directs the Settlement Administrator to issue checks
28 to the LWDA and Aggrieved Employees along with an explanatory letter in the form attached as

1 **Exhibit A** to the Settlement Agreement, and as set forth in the Settlement Agreement, and to
2 otherwise carry out its duties as set forth in the Settlement Agreement; and

3 8. The Court hereby grants the Parties' stipulation to transfer all claims alleged in *Austin*
4 *Scott v. Pacifica Hotel Company*, San Mateo County Superior Court, Case No. 20-CIV-03647
5 ("Scott Action") and in *Zachary Covarrubias v. Pacifica Hotel Company*, Los Angeles County
6 Superior Court, Case No. 21STCV03280 ("Covarrubias Action"). The Court reserves exclusive and
7 continuing jurisdiction over the Action and the Parties under Code of Civil Procedure § 664.6 for the
8 purpose of supervising implementation, enforcement, construction, administration, and interpretation of the
9 Settlement Agreement.

10 9. Plaintiffs shall promptly submit a copy of this Order to the LWDA pursuant to
11 PAGA.

12 10. Neither this Order nor the Settlement Agreement (or any other document referred to
13 herein, or any action taken to carry out this Order) is, may be construed as, or may be used as, an
14 admission of liability or fault by Defendant or the Released Parties, or a finding as to the validity of
15 any claims in the Action or of any wrongdoing or violation of law that is otherwise alleged, or could
16 have been alleged, against Defendant or the Released Parties. The Settlement Agreement is not a
17 concession by the Parties and, to the extent permitted by law, neither the Settlement Agreement nor
18 this Order and Judgment, nor any of their terms or provisions, nor any of the negotiations or
19 proceedings connected with them, shall be offered as evidence or received in evidence in any
20 pending or future civil, criminal, or administrative action or proceeding to establish any liability of,
21 or admission by the Released Parties. Notwithstanding the foregoing, nothing in this Order and
22 Judgment shall be interpreted as prohibiting the use of this Order and Judgment in a proceeding to
23 consummate or enforce the Settlement Agreement, or the use of this Order and Judgment to defend
24 against the assertion of claims in any other proceeding, or as otherwise required by law. This Order
25 and Judgment and the Settlement Agreement may be filed in any action by Defendant or the
26 Released Parties to support a defense of res judicata, collateral estoppel, release, waiver, good-faith
27 settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion,
28 issue preclusion or similar defense or counterclaim.

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IT IS SO ORDERED.

2/3/2023



HON. RICHARD S. WHITNEY
SUPERIOR COURT JUDGE