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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO—CENTRAL

LIZBETH GARCIA

PLAINTIFF,
V.

THE BAY CLUBS COMPANY, LLC;
AND DOES 1 THROUGH 50, INCLUSIVE,

DEFENDANT(S).

CASE NO.: 37-2018-00029247-CU-OE-CTL

PAGA ENFORCEMENT ACTION

**[PROPOSED] ORDER APPROVING
THE PARTIES' PAGA SETTLEMENT
AGREEMENT**

Date: March 8, 2022
Time: 8:30 am
Dept.: C-71
Judge: Hon. Gregory W. Pollack
Complaint Filed: June 13, 2018
Trial Date: January 14, 2022

[filed concurrently with Plaintiff Lizbeth Garcia's Notice of Unopposed Ex Parte Application; Plaintiff's Unopposed Ex Parte Application Declaration of Jeffrey L. Hogue; Declaration of Devon K. Roepcke; Declaration of Ernesto Sanchez; Declaration of William M. Turner; Declaration of Lizbeth Garcia; Declaration of Jeyson Pineda; Declaration of Patricia Calderon; Declaration of Caroline Salazar; Notice of Lodgment; Proposed Judgement; Request for Judicial Notice]

1 **ORDER APPROVING THE PARTIES' PAGA SETTLEMENT AGREEMENT**

2 1. The Court has received and considered the request of Plaintiff Lizbeth
3 Garcia as aggrieved employee acting as private attorney general under the Labor Code Private
4 Attorneys General Act of 2004, sections 2698, *et seq.* ("PAGA") for approval of the Parties'
5 PAGA Settlement Agreement, entered into between Plaintiff on behalf of the state of California
6 as private attorney general pursuant to PAGA. **GOOD CAUSE** having been shown, the Court
7 hereby approves the Parties' Private Attorneys General Act (Labor Code § 2698 *et seq.*)
8 Settlement Agreement ("PAGA Settlement Agreement").
9

10 2. This Order hereby adopts and incorporates by reference the terms and
11 conditions of the PAGA Settlement Agreement, together with the definitions used and contained
12 therein.
13

14 3. The Court finds that it has jurisdiction over the subject matter of the action
15 and over all parties to the action, including all Aggrieved Employees.
16

17 4. The Court has considered all relevant factors for determining the fairness
18 of the PAGA Settlement Agreement and has concluded that all such factors weigh in favor of
19 approving the PAGA Settlement Agreement. In particular, the Court finds that the settlement
20 was reached following meaningful discovery and investigation conducted by Plaintiff; that the
21 PAGA Settlement Agreement is the result of serious, informed, adversarial, and arm's-length
22 negotiations between the Parties; and that the terms of the settlement are in all respects fair,
23 adequate, and reasonable.
24

25 5. In so finding, the Court has considered all evidence presented, including
26 evidence regarding the strength of Plaintiff's PAGA claims; the risk, expense, and complexity of
27 the claims presented; the likely duration of further litigation; the amount offered in settlement;
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1 the extent of investigation and discovery completed; and the experience and views of counsel.

2 The Parties have provided the Court with sufficient information about the nature and magnitude
3 of the claims being settled, as well as the impediments to recovery, to make an independent
4 assessment of the reasonableness of the terms to which the Parties have agreed.
5

6 6. Accordingly, the Court hereby approves the settlement as set forth in the
7 PAGA Settlement Agreement and expressly finds that the settlement is, in all respects, fair,
8 reasonable, adequate and hereby directs implementation of all remaining terms, conditions, and
9 provisions of the PAGA Settlement Agreement.
10

11 7. The PAGA Settlement Agreement is not an admission by Defendant, nor
12 is this Order a finding of the validity of any allegations or of any wrongdoing by Defendant.
13 Neither this Order, the PAGA Settlement Agreement, nor any document referred to herein, nor
14 any action taken to carry out the PAGA Settlement Agreement, may be construed as, or may be
15 used as, an admission of any fault, wrongdoing, omission, concession, or liability whatsoever by
16 or against Defendant.
17

18 8. The settlement of civil penalties under PAGA in the amount of
19 approximately \$1,484,079.26 is hereby approved. Seventy-Five Percent (75%), or
20 approximately \$1,113,059.44, shall be paid to the California Labor and Workforce Development
21 Agency. The remaining Twenty-Five Percent (25%), or approximately \$371,019.82, shall be
22 paid to the Aggrieved Employees.
23

24 9. The Court hereby awards Named Plaintiff Service Payments in the
25 aggregate amount \$40,000.00 distributed as follows: \$10,000.00 to plaintiff Lizbeth Garcia, and
26 a total of \$30,000.00 to the four remaining Plaintiffs in the amount of \$7,500.00 each. These
27 payments to the named plaintiffs are fair and reasonable in recognition of their work and efforts
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1 in obtaining the benefits of the Settlement Sum for the State and Aggrieved Employees, for
2 undertaking the risk for the payment of costs in the event this matter had not successfully
3 resolved, and for executing a General Release of all claims against Released Parties, including all
4 claims that are not being released by other Aggrieved Employees.
5

6 10. The Court hereby awards a total of \$859,250.00 in attorneys' fees and
7 \$54,170.74 in costs and expenses to Hogue & Belong, the Law Offices of Devon K. Roepcke,
8 PC, Turner Dhillon, and Liberation Law Group, P.C.. The Court finds that the requested award
9 of attorneys' fees is reasonable for a contingency fee in this PAGA action.
10

11 11. The Court approves settlement administration costs and expenses of no
12 more than \$17,500.00 to IL YM.

13 12. The Court approves the scope of the release as set forth in the PAGA
14 Settlement Agreement. Following entry of this Order and accompanying Judgment and the
15 Settlement Sum being fully funded, Plaintiffs Lizbeth Garcia, Allyson Klipa, Carolina Salazar,
16 Jeyson Pineda, Patricia Calderon, Aggrieved Employees, and the State of California shall release
17 the Released Claims against the Released Parties during the Release Period.
18

19 a. The term "Aggrieved Employees" shall consist of the all non-
20 exempt employees of Defendant The Bay Clubs Company, LLC ("Defendant") currently or
21 formerly employed in California at any time between April 9, 2017 to March 31, 2022.
22

23 b. The term "Release Period" shall cover the time period between
24 April 9, 2017 to March 31, 2022.

25 c. The term "Released Claims" shall consist of any and all past or
26 present claims, complaints, demands, liabilities, debts, obligations, liens, costs, attorneys' fees,
27 promises, losses or damages for civil penalties under the Private Attorneys General Act alleged
28

1 in the PAGA Matters or could have been alleged in the PAGA Matters based on the facts,
2 theories, and/or claims alleged in PAGA Matters, including, but not limited to, unpaid wages,
3 unpaid minimum wages, unpaid overtime wages, failure to provide meal or rest periods, failure
4 to pay meal and rest period premiums, split shift premiums, failure to provide accurate itemized
5 wage statements, failure to pay all wages due upon separation of employment, failure to pay
6 commissions, failure to provide signed commissions agreement, failure to reimburse business
7 expenses, failure to maintain accurate payroll records, all Labor Code sections and Wage Order
8 sections alleged in the PAGA Matters, civil penalties or other damages that were alleged or could
9 have been alleged in the PAGA Matters (including but not limited to violations or damages
10 relating to meal periods, rest periods, pay stubs, wage statements, failure to reimburse, unpaid
11 sick time, unpaid split shift premiums, regular rate of pay issues, rounding, time-shaving, time
12 record alteration, unpaid vacation time, off the clock and other unpaid regular and overtime
13 wages, unreimbursed expenses, violation of Labor Code section 2802, unpaid overtime, unpaid
14 double time, unlawful deductions, and waiting time penalties).

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18 d. The term “Released Parties” shall consist of Defendant The Bay
19 Clubs Company, LLC and its past, present, and future representatives, directors, officers,
20 employees, agents, attorneys, affiliates, members and shareholders, including Matthew Stevens,
21 Kevin Klipfel, and Erin Rucker Oto, as well as all of their respective parent companies, affiliated
22 companies, owners, investors, sponsors, subsidiary companies, affiliates, client(s), client(s)
23 facilities, consultants, agents, insurers, attorneys, predecessors, assignors, and/or assigns and/or
24 any other individual or entity that could be liable for the claims raised in the PAGA Matters.

25
26 e. The term “PAGA Matters” shall consist of the following actions:
27 *Lizbeth Garcia v. The Bay Clubs Company, LLC*, San Diego Superior Court (Case No.: 37-2018-
28

00029247- CU-OE-CTL); *Allyson Klipa v. The Bay Clubs Company, LLC*, San Francisco Superior Court (Case No.: CGC-20-587892); *Carolina Salazar v. The Bay Clubs Company, LLC, et al.*, Los Angeles Superior Court (Case No.: YC073022); and *Jeyson Pineda, et al. v. The Bay Clubs Company, LLC, et al.*, San Mateo County Superior Court (Case No.: 18CIV05996).

13. The Court orders, within five (5) business days upon Defendant's funding of the Settlement Sum, Plaintiffs Allyson Klipa, Carolina Salazar, Jeyson Pineda and Patricia Calderon to dismiss their respective PAGA Matters against Defendant and any Released Parties with prejudice.

14. Upon entry of this Order and accompanying Judgment, the Court permanently enjoins and forever bars Plaintiffs Lizbeth Garcia, Allyson Klipa, Carolina Salazar, Jeyson Pineda, Patricia Calderon, the Aggrieved Employees, and the State of California from instituting or prosecuting any of the Released Claims against the Released Parties during the Release Period which were resolved as part of the PAGA Settlement Agreement.

15. The Court shall retain exclusive and continuing jurisdiction over the above captioned action and the parties for purposes of enforcing the terms of the Settlement Agreement.

Date: _____

Hon. Gregory W. Pollack
Judge of the Superior Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO—CENTRAL

LIZBETH GARCIA,

Plaintiff,

vs.

THE BAY CLUBS COMPANY, LLC; and
DOES 1 through 50, inclusive,

Defendant

CASE NO.: 37-2018-00029247-CU-OE-CTL

[PROPOSED] JUDGMENT

Date: March 8, 2022

Time: 8:30 a.m.

Dept.: 71

Judge: Hon. Gergory W. Pollack

Complaint Filed: June 13, 2018

Trial Date: January 14, 2022

1 **JUDGMENT**

2 Pursuant to the Order Approving the Parties' PAGA Settlement Agreement (the "Order"),
3 it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:
4

5 1. Judgment in this matter is entered in accordance with the terms of the Order and the
6 Private Attorneys General Act (Labor Code §2698 et seq.) Settlement Agreement (the "PAGA
7 Settlement Agreement").

8 2. This Judgment shall be binding on all Aggrieved Employees and the State of California,
9 who are hereby barred by the doctrine of res judicata from re-litigating the Settled Claims, as that
10 term is defined by the PAGA Settlement Agreement. (See *Arias v. Superior Court* (2009) 46 Cal.
11 4th 969, 986 (holding that a judgment in a representative action brought by an aggrieved
12 employee under PAGA is binding not only on the named employee plaintiff but also on state
13 labor law enforcement agencies and any aggrieved employee not a party to the proceeding).)

14 3. Without affecting the finality of the Judgment, the Court shall retain exclusive and
15 continuing jurisdiction over the above-captioned action and the parties for purposes of enforcing
16 the terms of the Judgment and the PAGA Settlement Agreement.
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18 4. Neither this Judgment, the Order, the PAGA Settlement Agreement, any document
19 referred to herein, any exhibit to any document referred to herein, any action taken to carry out
20 the settlement, nor any negotiations or proceedings related to the settlement are to be construed
21 as, or deemed to be evidence of, or an admission or concession with regard to, the denials or
22 defenses of Defendant (or any settling party), and shall not be offered in evidence in any
23 proceeding against the Parties hereto in any court, administrative agency, or other tribunal for
24 any purpose whatsoever other than to enforce the provisions of the Order and Judgment.
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27 5. This document shall constitute a judgment.
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2 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**
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6 Date: _____

7 Hon. Gregory W. Pollack
8 Judge of the Superior Court
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