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FELIX DE LA ROSA FUENTES

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

FELIX DE LA ROSA FUENTES, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

v.

LA JOLLA BEACH AND TENNIS CLUB
PARTNERS L.P., a California corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No.: 37-2020-00045980-CU-OE-CTL

*[Assigned for All Purposes to the Hon. James A.
Mangione, Dept. C-75]*

**[PROPOSED] ORDER AND JUDGMENT
GRANTING PLAINTIFF'S MOTION FOR
SETTLEMENT APPROVAL OF CLAIMS
BROUGHT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT AND
REASONABLE ATTORNEYS' FEES, COSTS,
AND ENHANCEMENT AWARD**

Date: March 4, 2022
Time: 9:00 a.m.
Dept.: 75

Complaint Filed: December 15, 2021
Trial Date: None Set

1 This matter came on regularly for hearing before this Court on March 4, 2022, at 9:00 a.m.
2 Having considered the parties' PAGA Settlement Agreement ("Settlement"), the documents and
3 evidence presented in support thereof, and recognizing the disputed factual and legal issues involved
4 in this case, the risks of further prosecution, the substantial benefits to be received by the State of
5 California and the Aggrieved Employees pursuant to the Settlement, the fair, reasonable, and adequate
6 nature of the settlement obtained as a result of good faith arm's-length negotiations between the parties,
7 the Court hereby makes a final ruling that the settlement is approved pursuant to Labor Code § 2699(1).
8 Good cause appearing therefor, the Court hereby GRANTS Plaintiff's Motion for Settlement Approval
9 of Claims Brought under the Private Attorneys General Act and Reasonable Attorneys' Fees, Costs,
10 and Enhancement Award and ORDERS as follows:

11 1. The "Aggrieved Employees" shall be defined as:

12 All current and former hourly, non-exempt employees of Defendant La Jolla Beach and
13 Tennis Club Partners L.P. who worked in California at any time from December 15,
2019 through December 31, 2021.

14 2. The "PAGA Period" means the time period from December 15, 2019 through December
15 31, 2021.

16 3. The Court hereby approves the Settlement as set forth in the Settlement as fair,
17 reasonable, and adequate, and directs the parties to effectuate the Settlement according to the terms of
18 the Settlement.

19 4. The Court orders that La Jolla Beach & Tennis Club Partners, L.P. ("LJBTC" or
20 "Defendant") shall deposit the Gross Settlement Amount of Two Hundred Seventy Thousand Dollars
21 and Zero Cents (\$270,000.00) to the Settlement Administrator within thirty (30) calendar days of Court
22 approval of the settlement. However, if the Settlement Administrator determines that the Escalator
23 Clause in Section III.3 of the Settlement has been triggered, LJBTC is ordered to deposit with the
24 Settlement Administrator the increased Gross Settlement Amount as required and calculated pursuant
25 to the Escalator Clause in Section III.3 of the Settlement. Specifically, the Escalator Clause in Section
26 III.3 of the Settlement provides that there are an estimated 14,472 pay periods worked by the Aggrieved
27 Employees during the PAGA Period of December 15, 2019 through December 31, 2021. If the total
28

number of pay periods exceeds 14,472 by more than ten percent (i.e., more than 15,919.2), then the Gross Settlement Amount shall be increased by the same percentage by which the number of pay periods exceeds 15,919.2.

5. The Court hereby approves, as to form and content, the Notice of PAGA Settlement and Release of Claims attached to the Settlement as Exhibit A.

6. The Court hereby appoints Simpluris as Settlement Administrator.

7. Within ten (10) business days after the date this Order is signed by the Court, Defendant shall provide the Settlement Administrator with information for Aggrieved Employees. Defendant will in good faith compile from its records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last known mailing address, last known telephone number, start date(s) of employment, end date(s) of employment, total pay periods worked, and Social Security numbers. The list shall also include the sum total of all pay periods worked by Aggrieved Employees during the PAGA Period.

8. Within seven (7) business days of receiving the Aggrieved Employees' information from Defendants, the Settlement Administrator will circulate to counsel for all Parties an anonymized spreadsheet containing the Individual Settlement Payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall also determine whether the Escalator Clause in Section III.3 of the Settlement has been triggered. The Settlement Administrator shall obtain approval from all counsel for all Parties of the calculations before mailing Individual Settlement Payments. Within two (2) business days of receiving approval from counsel of the payment calculations, Phoenix Settlement Administrators is directed to mail the Individual Settlement Payments and the Notice of Settlement to the Aggrieved Employees. A true and correct copy of the proposed Notice agreed upon by the Parties to be mailed to the Aggrieved Employees is attached hereto as **Exhibit A**.

9. The Court finds that attorneys' fees in the total amount of \$90,000.00 for Haines Law Group, APC and Lidman Law, APC (collectively, "Plaintiff's Counsel") (or the increased amount as a result of the Escalator Clause in Section III.3 of the Settlement being triggered), and reimbursement of

litigation costs of \$23,025.49 to Plaintiff's Counsel are fair, reasonable, and adequate, and orders that the Settlement Administrator distribute these payments to Plaintiff's Counsel as provided for in the Settlement. Within two (2) business days of receiving approval from counsel of the payment calculations as provided for in Paragraph 8 above, Simpluris is directed to distribute to Plaintiff's counsel the Court-approved attorneys' fees and costs.

10. The Court orders that the Settlement Administrator shall be paid \$4,000.00 for all of its work done and to be done until the completion of this matter and finds that sum appropriate.

11. The Court finds that enhancement award of \$5,000.00 to Plaintiff Felix De La Rosa Fuentes, is fair and reasonable in recognition of the unique contributions he has made, the risks he undertook on behalf of the Aggrieved Employees and the State of California. Within two (2) business days of receiving approval from counsel of the payment calculations as provided for in Paragraph 8 above, Simpluris is directed to distribute to Plaintiff the Court-approved enhancement award.

12. The Court finds that the amount from the Gross Settlement Amount remaining after deductions for: (i) Plaintiff's Counsel's attorneys' fees and costs, (ii) enhancement award to Plaintiff; and (iii) Settlement Administrator fees ("Net Settlement Amount") shall be distributed as follows: 75% shall to be paid to the California Labor and Workforce Development Agency ("LWDA") and 25% to be distributed to the Aggrieved Employees *pro rata* based on the proportional number of pay periods worked by each Aggrieved Employee during the PAGA Period, as provided for in the Settlement. The Court finds that these amounts and the distribution formula as set forth in the Settlement is fair, adequate, and reasonable, and orders that payment be made to the LWDA and Aggrieved Employees in accordance with the terms of the Settlement.

13. The Court hereby approves the limited scope of the release as set forth in the Settlement. Specifically, following entry of this Order and Final Judgment, in his capacity as a Private Attorney General or "aggrieved employee" acting on behalf of himself, the State of California and Aggrieved Employees, and in consideration of the enhancement award awarded to him, Plaintiff hereby releases Defendant and its former, present and future owners, parents, subsidiaries, and all of their current, former and future officers, directors, members, managers, employees, consultants, partners,

1 shareholders, joint venturers, agents, successors, assigns, accountants, insurers, or legal representatives
2 (“Released Parties”), from all claims, rights, demands, liabilities and causes of action for civil penalties
3 under Plaintiff’s Cause of Action for violations of the Labor Code Private Attorneys General Act
4 (“PAGA”), Labor Code § 2698 *et seq.* pled in the operative Complaint in the Action, or civil penalties
5 under Plaintiff’s Cause of Action for PAGA that could be brought based on the factual allegations in
6 the operative Complaint in the Action, that arose during the PAGA Period, including any related claims
7 for attorneys’ fees, costs, or interest resulting therefrom (hereinafter, “PAGA Released Claims”).

8 14. The Released Claims herein does not release the Released Parties from any underlying
9 Labor Code violations upon which Plaintiff’s Cause of Action for PAGA is based.

10 15. Upon entry of this Final Order and Judgment, the Court permanently enjoins and forever
11 bars Plaintiff and the Aggrieved Employees from instituting or prosecuting any action against the
12 Released Persons which was resolved as part of the Settlement. Without affecting the finality of this
13 Final Order and Judgment in any way, the Court retains jurisdiction to enforce the terms of the
14 Settlement.

15 16. Plaintiff shall file a declaration confirming the final distribution of funds on or before
16 December 1, 2022.

17
18 **IT IS SO ORDERED.**

19
20 Dated: _____, 2022

21 By: _____
22 Honorable James A. Mangione
23 Judge of the Superior Court
24
25
26
27
28

EXHIBIT A

EXHIBIT A

NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS

Felix De La Rosa Fuentes v. La Jolla Beach and Tennis Club Partners L.P.
San Diego County Superior Court Case No. 37-2020-0045980-CU-OE-CTL

<<Name>>
<<Address>>
<<City>>, <<State>> <<Zip Code>>
XX - XX - _____

I. NOTICE OF PAGA SETTLEMENT

The San Diego County Superior Court (the “Court”) has approved a settlement in the above-captioned action filed by Felix De La Rosa Fuentes (“Plaintiff”) on behalf of himself and all other aggrieved employees.

In this lawsuit, Plaintiff is seeking to recover civil penalties for alleged violations of the California Labor Code on behalf of the California Labor and Workforce Development Agency (“LWDA”) and other aggrieved employees under the California Private Attorneys General Act (the “PAGA”). These civil penalties are based on Plaintiff’s allegations that La Jolla Beach and Tennis Club Partners, L.P. (“LJBT”): (i) failed to pay all overtime wages owed; (ii) failed to pay all minimum wages owed; (iii) failed to provide legally compliant meal periods; (iv) failed provide accurate, itemized wage statements; and (v) failed to timely pay upon termination of employment; and as a result is liable for civil penalties under the PAGA.

The Court has ***not*** made a determination about the merits of Plaintiff’s claims. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of Plaintiff’s claims.

LJBT denies Plaintiff’s allegations. It maintains that it was in compliance with the California Labor Code at all times and enters into this Settlement with no admission of liability and solely for the purposes of compromising and settling the action to avoid the cost and operational burden of continued litigation.

You are receiving this Notice because you are in the group of employees referred to as “Aggrieved Employees,” which is defined as: “all current and former hourly, non-exempt employees of Defendant La Jolla Beach and Tennis Club Partners L.P. who worked in California at any time from December 15, 2019 through December 31, 2021.”

II. INDIVIDUAL PAGA PAYMENT

Each individual PAGA payment was calculated on a pro rata basis (*i.e.*, proportional) based on the number of pay periods worked by each Aggrieved Employee in the PAGA Period (defined as December 15, 2019 through December 31, 2021). Your individual PAGA payment has been calculated at \$[AMOUNT PAID TO THIS EMPLOYEE]. Your payment is enclosed with this Notice.

Please Note: One hundred percent (100%) of your Individual PAGA Payment under this Settlement will be considered penalties reported on an IRS Form 1099, and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences, if any, of your individual PAGA payment. Neither Plaintiff nor LJBT has made any representations or warranties regarding the taxation of your Individual PAGA payment. Nothing within this

notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended).

III. RELEASE

The Court has approved the Parties' Settlement Agreement ("Settlement"). By operation of the Settlement's terms, all Aggrieved Employees including you will release LJBT and its former, present and future owners, parents, subsidiaries, and all of their current, former and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, or legal representatives ("Released Parties") from any and all claims, rights, demands, liabilities and causes of action for civil penalties under Plaintiff's Cause of Action for violations of the Labor Code Private Attorneys General Act ("PAGA"), Labor Code § 2698 *et seq.* pled in the operative Complaint in the Action, or civil penalties under Plaintiff's Cause of Action for violations of the PAGA that could be brought based on the factual allegations in the operative Complaint in the Action that arose during the PAGA Period, including any related claims for attorneys' fees, costs, or interest resulting therefrom, ("PAGA Released Claims").

Upon entry of the Order approving the Settlement, any Aggrieved Employee covered by this Agreement (including you) will be barred from proceeding with any of the PAGA Released Claims released by this Settlement, which means claims for civil penalties for the Labor Code and Wage Order violations alleged in this Lawsuit.

IV. SETTLEMENT ADMINISTRATOR

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

You may call the Settlement Administrator, Simpluris, at [ADMINISTRATOR INFO] with any questions.

Settlement checks will be void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to the California State Controller's Office under the unclaimed property laws in the name of the Aggrieved Employee to whom the check was issued. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.