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10
11 Attorneys for Plaintiffs JOSE
FERNANDO ROBLES and Aggrieved
12 Employees

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SAN DIEGO

15
16 JOSE FERNANDO ROBLES, an
17 individual in his representative capacity
18 on behalf of all
19 Aggrieved Employees,

20 Plaintiffs,

21 v.

22
23 JCS ACQUISITION, INC., a Texas
corporation, and DOES 1 through 50,

24 Defendants
25
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27
28

)
) Case No.: 37-2021-00007056-CU-
) OE-CTL
)
) **STIPULATION AND**
) **[PROPOSED] ORDER**
) **APPROVING SETTLEMENT OF**
) **PRIVATE ATTORNEYS**
) **GENERAL ACT CLAIMS, AND**
) **DISMISSING THE ACTION**
) **WITH PREJUDICE**

)
) Complaint Filed: February 18, 2021
) Judge: Hon. Katherine Bacal
) Department: 69
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1 **STIPULATION**

2 **IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES AS**
3 **FOLLOWS:**

4 1. On February 18, 2021, Plaintiff Jose Fernando Robles ("Plaintiff") filed his
5 complaint against Defendant JCS Acquisition, Inc. ("Defendant") (collectively,
6 "Parties") alleging 1. PAGA Claim for Failure to Pay State Minimum/Regular Wages;
7 2. PAGA Claim for Failure to Pay State Overtime Wages; 3. PAGA Claim for Failure
8 to Timely Pay Wages; 4. PAGA Claim for Meal and Rest Break Labor Code
9 Violations; 5. PAGA Claim for Inaccurate Wage Statements; 6. PAGA Claim for
10 Failure to Maintain Payroll Records; 7. PAGA Claim for Failure to Comply with
11 California Sick Pay Laws; and 8. PAGA Claim for Miscellaneous Labor Code
12 Provisions.

13 2. After complying with the requirements set forth in Labor Code § 2698
14 *et seq.*, the Private Attorneys General Act (hereinafter, "PAGA"), by sending
15 a letter by online submission to the Labor and Workforce Development Agency
16 ("LWDA"), Plaintiff filed a First Amended Complaint on April 29, 2022.

17 3. Thereafter, Plaintiff propounded discovery on Defendant, including Special
18 Interrogatories and Inspection Demands.

19 4. Thereafter, the Parties agreed to attend mediation, to participate in an
20 informal exchange of documents and information, and to stay formal discovery
21 pending the outcome of mediation. The Parties scheduled mediation on January 5,
22 2022 before well-respected neutral Eve Wagner, Esq.

23 5. The Parties memorialized this understanding in a stipulation that was filed
24 with this Court, and sought an order from the Court regarding the same.

25 6. On June 16, 2021, the Court entered an order on the Parties' stipulation,
26 staying formal discovery and law and motion practice pending the mediation.
27

1 7. In advance of mediation, the Parties engaged in an informal exchange of
2 information and documents as contemplated by their stipulation and the Court's order
3 thereon.

4 8. On January 5, 2022, mediation took place. The Parties were unable to reach
5 a resolution on the date of mediation.

6 9. The mediator made a mediator's proposal following the mediation on
7 January 5, 2022.

8 10. On January 12, 2022, the mediator reported that the proposal had been
9 accepted by all Parties and a settlement had been reached.

10 11. Thereafter, the Parties negotiated the terms of a long form settlement
11 agreement.

12 12. After considerable back and forth regarding the long form agreement, it
13 ultimately became executed by all Parties on June 6, 2022.

14 **TERMS OF THE SETTLEMENT**

15 13. A true and correct copy of the PAGA settlement agreement is attached
16 hereto as Exhibit 1 to the Declaration of Ian Pancer ISO Stipulation for Approval of
17 PAGA Settlement ("Pancer Decl."). Exhibit A attached to the PAGA settlement
18 agreement is the letter which will be included in the mailing to each aggrieved
19 employee.

20 14. The gross settlement payment to be made pursuant to the settlement
21 agreement is \$150,000. (Exhibit 1, para. 6.1). The aggrieved employees covered by
22 the settlement include all current and former employees of Defendant in the State of
23 California at any time during the Settlement Period, which is defined as all pay
24 periods between February 17, 2020 and January 31, 2022. (Exhibit 1, para. 1.1,
25 1.15).

26 15. Defendant represents in the settlement agreement that the number of pay
27 periods within the Settlement Period does not exceed 8,400. (Exhibit 1, para. 6.2).

16. Defendant further represents that the approximate number of employees in the settlement period is 679.

17. If the number of pay periods reaches the maximum of 8,400, the gross settlement of \$150,000 equates to \$17.85 per pay period for the release of civil penalties and averages \$220.91 per aggrieved employee.

18. The settlement agreement permits Plaintiff's counsel to seek attorney fees of up to 35% of the gross settlement, equaling \$52,500, and Plaintiff's counsel seek that sum. (Exhibit A, para. 6.6).

19. The cost of settlement administration, to be provided by established and respected settlement administrator Simpluris, is capped at \$4,350. This cap assumes no substantial variance from the 679 employees as stated by Defendant.

20. The costs incurred by Plaintiff's counsel are \$11,630.70 (\$461.36 for filing and efileing complaint, \$40 for service of process, \$15.44 for efileing; \$13.90 for certified mailings; \$1,575 for Berger Consulting Services for data analysis of records produced by Defendant; \$9,450 for mediator services to Signature Resolution for Eve Wagner, Esq.; \$75 to LWDA for filing PAGA Notice).

21. The breakdown on cost reimbursement is \$4,725 to Thomas Rutledge, Esq. and \$6,905.70 to Ian Pancer, Esq.

22. The settlement amount represents a fair compromise of the claims. Defendant presented well-reasoned defenses to Plaintiff's claims, such that the opportunity to negotiate this settlement presented greater benefits to the aggrieved employees than continuing to litigate further and expend more time and resources in doing so.

23. Furthermore, the threat of having the PAGA claim eviscerated by the U.S. Supreme Court's recent decision in *Viking River Cruises v. Moriana* was an additional impetus for agreeing to the settlement, as Plaintiff's employment was

1 governed by an arbitration agreement. In light of the *Viking River Cruises* decision,
2 hindsight certainly supports this analysis.

3 24. Based on their experience, particularly that of Thomas Rutledge, Esq. who
4 has litigated dozens of representative actions, Plaintiff's counsel believe the
5 settlement here is fair and reasonable and warrants approval by the Court.
6 (Declaration of Thomas Rutledge ISO Stipulation for Approval of PAGA Settlement,
7 para. 50, 56).

8 25. Should the Court grant approval of the settlement, the net settlement fund
9 will be \$81,519.30, calculated as follows:

10 \$150,000

11 -\$52,500 (attorney fees)

12 -\$11,630.70 (Plaintiffs' counsel costs)

13 -\$4,350 (settlement administration)

14 -----
15 **\$81,519.30**

16 26. Of the net settlement amount, 75%, equaling \$61,139.47, will be paid to the
17 LWDA, and 25%, equaling \$20,379.83, will be paid to the aggrieved employees.
18 The payment to each aggrieved employee shall be determined on a pro-rata basis
19 based on the number of pay periods that each aggrieved employee worked during the
20 Settlement Period divided by the total number of pay periods worked by all aggrieved
21 employees during the Settlement Period.

22 **PLAINTIFF'S RELEASE OF CLAIMS**

23 27. In addition to the resolution reached on the PAGA claims, the Parties
24 reached a resolution concerning Plaintiff's individual claims, in consideration for
25 which Plaintiff has signed a confidential settlement agreement with a general release.
26 The release of individual claims signed by Plaintiff is contingent on the Court's
27 approval of the PAGA settlement. The release of individual claims also provides that
28 Plaintiff may not disclose anything further absent an inquiry from the Court or the
LWDA.

1 **THE PARTIES REQUEST THE COURT APPROVE THE PAGA**
2 **SETTLEMENT**

3 28. The parties now request that the Court enter the accompanying order
4 approving the settlement as reflected in the Parties' Settlement Agreement (Exhibit 1
5 to Pancer Decl.) as permitted by Labor Code § 2699(1), and dismissing this Action
6 with prejudice.

7 29. The parties further agree that, after entry of this Order and pursuant to
8 California Code of Civil Procedure section 664.6, the Court shall retain jurisdiction of
9 the Action to construe, interpret, implement, and enforce the Settlement Agreement
10 and this Order.

11 30. Concurrent with the filing of this Stipulation, Plaintiff's will submit the
12 Settlement Agreement to the LWDA in compliance with Labor Code section
13 2699(1)(2). (Pancer Decl., para. 30).

14 Dated: September 8, 2022 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

15
16 By: /s/ Lauren J. Blaes

17 MATTHEW M. SONNE
18 LAUREN J. BLAES
19 Attorneys for Defendant JCS ACQUISITION, INC.

20 Dated: September 8, 2022 THE LAW OFFICE OF IAN PANCER

21 By: /s/ Ian Pancer
22 IAN PANCER Attorney for Plaintiff JOSE FERNANDO
23 ROBLES

24 Dated: September 8, 2022 THE LAW OFFICE OF THOMAS RUTLEDGE

25
26 By: /s/ Thomas Rutledge
27 THOMAS RUTLEDGE Attorney for Plaintiff JOSE
28 FERNANDO ROBLES

1 **ORDER**

2 The Court, having reviewed the parties' Private Attorneys General Act (Labor Code §
3 2698 et. seq.) Settlement Agreement (the "Settlement" or "Settlement Agreement")
4 attached as Exhibit "1" to the concurrently-filed Declaration of Ian Pancer, together
5 with the Stipulation of the Parties, the Declaration of Thomas Rutledge, and the
6 Declaration of Ian Pancer hereby ORDERS as follows:

7 1. The Court finds the Settlement was entered into in good faith, that the
8 settlement is fair, reasonable and adequate, and that the settlement satisfies the
9 standards and applicable requirements for approval of PAGA representative actions
10 under California law.

11 2. The Court approves the penalties to be paid to the aggrieved employees and
12 the State of California as set forth in the Settlement Agreement, pursuant to Labor
13 Code § 2699(1). The Court further approves all payments to be made to Plaintiff's
14 counsel and the settlement administrator based on the terms of the Settlement.

15 3. This Action is hereby DISMISSED WITH PREJUDICE.

16 4. Upon entry of this Order, the Parties shall effectuate all terms of the
17 Settlement based on the provisions and timelines set forth in the Settlement
18 Agreement.

19 5. This Court shall retain jurisdiction with respect to all matters related to the
20 administration and consummation of the Settlement, including but not limited to all
21 matters related to the settlement and the determination of all controversies relating
22 thereto.

23 IT IS SO ORDERED.

24
25
26 Dated:

27 JUDGE OF THE SUPERIOR COURT