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Attorneys for Plaintiff
ASHLYN SCHWARTZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

ASHLYN SCHWARZ, on behalf of
herself and all others similarly situated

Plaintiff,

vs.

MUTESIX GROUP, INC., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 21STCV28719

*[Assigned for all purposes to Hon. Kenneth R.
Freeman, Dept.: SSC-14]*

**REQUEST TO DISMISS ENTIRE
COMPLAINT INCLUDING DISMISSAL OF
PLAINTIFF'S INDIVIDUAL PAGA CLAIMS
WITH PREJUDICE TO PLAINTIFF AND
WITHOUT PREJUDICE TO UNNAMED
AGGRIEVED EMPLOYEES;
[PROPOSED] ORDER**

Complaint Filed: August 4, 2021

1 Pursuant to California Rule of court 3.770, Plaintiff Ashlyn Schwartz (“Plaintiff”) hereby
2 requests the Court enter an order dismissing her individual Private Attorneys General Act
3 (“PAGA”) claims with prejudice, and Plaintiff’s representative PAGA allegations without
4 prejudice as to unnamed putative aggrieved employees, and without notice to unnamed putative
5 aggrieved employees, for the reasons set forth herein, without hearing.

6 **I. BACKGROUND**

7 On August 4, 2021, Plaintiff Ashlyn Schwartz, on behalf of herself and all others
8 similarly situated, filed the instant Class and Representative Action Complaint (“Complaint”)
9 against Defendant Mutesix Group, Inc., et al., and DOES 1 through 100. Plaintiff filed a Class
10 and Representative Action Complaint alleging the following claims against Defendant Mutesix
11 Group, Inc. (“Defendant”): (1) failure to pay all overtime wages; (2) failure to pay minimum
12 wages; (3) failure to reimburse necessary business expenses; (4) failure to provide meal periods;
13 (5) failure to provide rest periods; (6) waiting time penalties; (7) failure to provide accurately
14 itemized wage statements; (8) unfair business competition; and (9) civil penalties under the PAGA
15 (the “Action”). Plaintiff also alleged Defendant misclassified her and putative class members as
16 independent contractors. Plaintiff was employed by Defendant as a Digital Marketing specialist
17 from in or about January 2019, until in or about April 2020. Plaintiff was employed by Defendant
18 as an independent contractor and/or non-exempt employee for Defendant’s primary business
19 specializing in digital marketing and advertising from in or about January 2019, to in or about
20 April 2020. Declaration of Christopher L. Burrows (“Burrows Decl.”) at ¶ 4, concurrently filed
herewith.

21 Because of the existence of an arbitration agreement, Plaintiff dismissed the class and
22 individual allegations in the Complaint so she could proceed under PAGA only. The Parties
23 subsequently exchanged material information concerning the Action and engaged in substantive
24 arms’ length negotiations for months regarding Plaintiff’s representative allegations. Defendant
25 provided Plaintiff with a copy of the signed arbitration agreement requiring arbitration of “any and
26 all claims arising out of or related to ...your employment with the Company.” The Parties also
27 had an in depth discussion regarding the impact of *Viking River Cruises v. Moriana* (2022) 142
28 S.Ct. 1906, 2022 WL 2135491 (“*Viking River*”). See, Burrows Decl. at ¶ 7.

1 Following an analysis of the material exchanged between the Parties, Plaintiff and her
2 counsel determined that settlement of this matter on an individual basis was proper. Considering
3 the information provided by Defendant and the facts as obtained by counsel, Plaintiff's counsel
4 engaged in individual settlement discussions with Defendant's counsel, and a confidential
5 settlement agreement was reached, memorialized, and fully signed. Pursuant to the fully signed
6 settlement agreement, Plaintiff will dismiss her individual PAGA action, with prejudice.
7 However, this dismissal has no impact on the rights of other aggrieved employees. The settlement
8 is subject to a confidential settlement agreement, but Plaintiff's counsel will provide a copy to the
9 Court for in camera review if the Court so requests.¹ *Id.* at ¶ 8.

10 Dismissal under these terms, on an individual basis for only Plaintiff Schwartz, without
11 notice to the unnamed putative aggrieved employees will not prejudice the putative unnamed
12 aggrieved employees because this case has not been certified as a class or representative action by
13 the Court, this action has not become widely known to the public generally or to the members of the
14 putative aggrieved employees, and the members of the representative PAGA action will not be
15 prejudiced, given that discovery has been conducted confidentially by and between the Parties, only
16 affects Plaintiff's rights, and does not impact any aggrieved employee's right to bring his or her
17 separate action. *Id.* at ¶ 14.

18 Currently, no putative PAGA aggrieved employee members in the instant matter have been
19 individually provided notice of the case (or of the dismissal of class claims) and Plaintiff's counsel
20 is unaware of any other putative class member or aggrieved employee who intends to bring a
21 claim or who, in reliance on the Complaint, has refrained from bringing a claim similar to any of
22 the claims in the Complaint and therefore might be prejudiced by dismissal of the action under
23 California rule of Court 3.770 or otherwise. *Id.* at ¶ 15.

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28 ¹ The Parties have agreed that \$750.00 will be paid to the Labor Workforce Development Agency ("LWDA") in
accordance with PAGA's requirements. See Labor Code §2699(i). Plaintiff is also simultaneously submitting a copy
of this request for dismissal and supporting declaration to the LWDA.

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II. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court enter an Order dismissing her individual PAGA claims with prejudice as to Plaintiff, and Plaintiff's representative PAGA allegations without prejudice as to unnamed putative aggrieved employee members for the reasons set forth herein, without hearing.

Dated: September 22, 2022

Respectfully submitted,
BURROWS LAW FIRM

By: _____



Christopher L. Burrows
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ASHLYN SCHWARTZ