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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By G. Hornick ,Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO—NORTH COUNTY

JOSE PEREZ, an individual,

Plaintiff,

v.

MUTUAL PARTNERS, INC. dba
BEACHFRONT VACATION ONLY
RENTAL; DAVID PAUL FISCHBACH, an
individual; ADELE NELSON FISCHBACH, an
individual; PETER RODRIGUEZ, an
individual; and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 37-2021-00038932-CU-WT-NC

**STIPULATION RE: COURT
APPROVAL OF SETTLEMENT OF
PLAINTIFFS' PRIVATE ATTORNEYS
GENERAL ACT ("PAGA") CLAIM;
~~PROPOSED~~ ORDER;
MEMORANDUM OF POINTS AND
AUTHORITIES AND DECLARATION
OF RODOLFO RUIZ-VELASCO IN
SUPPORT THEREOF**

I/C: Hon. Earl H. Maas, III
Dept.: N-28

Date of First Paper: September 13, 2021
Trial Date: Off calendar pending approval of
this stipulation

[IMAGED FILE]

IT IS HEREBY STIPULATED by and between Plaintiffs JOSE PEREZ ("PEREZ") and
THOMAS F. DEVERS ("DEVERS") (collectively, "Plaintiffs") and Defendants MUTAL
PARTNERS, INC. dba BEACHFRONT VACATION ONLY RENTAL ("MPI"), DAVID

1 PAUL FISCHBACH, ADELE NELSON FISCHHBACH, and PETER RODRIGUEZ
2 (collectively, “Defendants”), on the other hand, (Plaintiffs and Defendants are referred to
3 collectively as the “Parties”), by their respective attorneys of record, with reference to the
4 following facts:
5

6 1. WHEREAS, Plaintiffs were previously employed by Defendants;

7 2. WHEREAS, on June 28, 2021, Plaintiff PEREZ filed an administrative claim with
8 the California Labor & Workforce Development Agency (“LWDA”) (LWDA Case No. LWDA-
9 CM-836287-21) (the “PAGA Action” or “PAGA Claim”) and sent it to Defendants via certified
10 mail that alleged certain Labor Code violations pursuant to the Private Attorneys General Act of
11 2004 or “PAGA,” codified at Labor Code sections 2698, et seq.;

12 3. WHEREAS, the Labor and Workforce Development Agency did not notify
13 Plaintiff PEREZ or his counsel that the agency intends to pursue said allegations within 65 days
14 of the postmark date on Plaintiff’s written notice per Labor Code section 2669.3(a)(2)(A);

15 4. WHEREAS, on September 13, 2021, Plaintiff PEREZ commenced a lawsuit in
16 the San Diego County Superior Court, entitled Jose Perez, Plaintiff, vs. Mutual Partners, Inc., et
17 al., Defendants, San Diego County Superior Court Case No. 37-2021-00038932-CU-WT-NC
18 (the “Complaint” or the “Litigation”), in which Plaintiff PEREZ made, among other things,
19 individual claims for wage and hour violations, retaliation and wrongful termination claims, and
20 the representative PAGA claim, where Plaintiff PEREZ alleged that he was owed unpaid
21 minimum wage compensation (wages), premium pay for meal and rest periods, damages for
22 records violations, business expenditure reimbursements, and related damages arising out of his
23 employment with Defendants;

24 5. WHEREAS, on March 25, 2024, Plaintiff DEVERS filed a supplemental notice
25 with the LWDA in the PAGA Action adding himself as a PAGA representative and claiming
26 similar wage and hour claims to Plaintiff PEREZ and in addition claiming misclassification as
27 independent contractor claims, and on March 25, 2024 Plaintiffs filed a First Amended
28 Complaint in this case adding Plaintiff DEVERS as a Plaintiff and adding his individual wage

1 and hour, retaliation and wrongful termination claims, and adding him as a PAGA Claim
2 representative;

3 6. WHEREAS, the First Amended Complaint generally seeks various damages and
4 penalties in connection with Plaintiffs' claims, including claims under PAGA;

5 7. WHEREAS, Defendants at all times disputed and denied, and continue to dispute
6 and deny that they ever were liable to Plaintiffs, or any other person, for any of the claims
7 asserted in the First Amended Complaint, including the claims for civil penalties under PAGA;

8 8. WHEREAS, the Parties entered into a confidential settlement agreement pursuant
9 to which Plaintiffs agreed to dismiss with prejudice all claims for civil penalties under PAGA in
10 exchange for Defendants' payment of \$25,000.00, which is calculated as \$21,500.00 in PAGA
11 civil penalties, plus \$3,500.00 to the PAGA settlement administrator;

12 9. WHEREAS, counsel for the Parties agree that the reasonable settlement value of
13 Plaintiffs' claims for civil penalties under PAGA, if any, is \$21,500, with 75% of that amount
14 (\$16,125) made payable to the LWDA, and 25% of that amount (\$5,375) made payable to the
15 aggrieved employees. This value is based on the Parties' negotiations, and considerations
16 including: (1) Defendants' dispute that any penalties under PAGA are due; (2) Defendants
17 cooperated with Plaintiffs' investigation; (3) the terms of the confidential settlement agreement
18 of Plaintiffs' claims under PAGA; (4) Plaintiff gave the LWDA the opportunity to investigate
19 Plaintiff's claims and the LWDA declined to do so; and (5) an award of PAGA civil penalties is
20 in the discretion of the Court;

21 10. WHEREAS, the aggrieved employees are defined as all nonexempt employees
22 and individuals who Plaintiffs allege are misclassified as independent contractors who worked
23 for Defendant MPI from April 6, 2020 to the date this case is dismissed (the "PAGA Period")
24 given California Rule of Court, Emergency Rule no. 9 which tolled to back to April 6, 2020;

25 11. WHEREAS, the Parties have agreed on claims administrator Phoenix Settlement
26 Administrators ("Phoenix") to distribute PAGA civil penalties in this case; and

27 12. WHEREAS, in order to satisfy the requirements of Labor Code section
28 2699(1)(2), which requires Court approval of any settlement for civil penalties sought pursuant to

1 PAGA, the Parties have agreed that acceptable PAGA civil penalties in the present case total
2 \$21,500, and the amount of \$16,125 (75% x \$21,500) shall be distributed to the LWDA by
3 Phoenix, and the amount of \$5,375 (25% x \$21,500) shall be distributed by Phoenix to the
4 aggrieved employees pro rata according to the amount of pay periods that they each worked
5 during the PAGA Period.

6
7 **RUIZ-VELASCO LAW**

8
9 DATED: April 22, 2025

By:



RODOLFO RUIZ-VELASCO
Attorney for Plaintiffs JOSE PEREZ and THOMAS
F. DEVERS

11
12
13 **DAWSON & OZANNE**

14 DATED: April 21, 2025

By:



BRIAN C. DAWSON
Attorneys for Defendants MUTUAL PARTNERS,
INC. et al.

1 **~~PROPOSED~~ ORDER**

2 **GOOD CAUSE APPEARING, IT IS SO ORDERED.**

3 1. The Parties' agreement to settle any and all claims available under Labor Code
4 sections 2698, et seq. (the Private Attorneys General Act or "PAGA") (LWDA Case No.
5 LWDA-CM-946781-23) pursuant to Plaintiffs' seventh (7th) cause of action in their First
6 Amended Complaint for \$25,000.00, which is calculated as \$21,500.00 in PAGA civil penalties,
7 and \$3,500.00 in PAGA civil penalties settlement administrator distribution costs, is approved by
8 this Court.
9

10 2. The aggrieved employees are defined as all nonexempt employees and all
11 individuals who Plaintiffs allege are misclassified as independent contractors who performed
12 work for Defendant MUTUAL PARTNERS, INC. from April 6, 2020 to the date this case is
13 dismissed with prejudice (the "PAGA Period").
14

15 3. The civil penalties amount of \$20,000.00, shall be distributed by settlement
16 claims administrator Phoenix Settlement Administrators with 75% of that amount (\$16,125.00)
17 made payable to the California Labor Workforce & Development Agency ("LWDA"), and 25%
18 of that amount (\$5,375.00) made payable to the aggrieved employees pro rata according to the
19 number of pay periods that each employee worked during the PAGA Period.
20

21 **IT IS SO ORDERED.**

22 Dated: April 25, 2025



23 Hon. Earl H. Maas, III

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION & BACKGROUND**

3 Mr. Jose Perez (“Plaintiff PEREZ”) was employed with Defendants in March of 2017 as
4 a laborer and foreman performing repair and renovation work. Plaintiff PEREZ’s employment
5 ended on or about January 17, 2021. Mr. Thomas F. Devers (“Plaintiff DEVERS”) worked for
6 Defendants from January 2023 to August 18, 2023 as a laborer in logistics and at Defendants’
7 warehouse (Plaintiff PEREZ and Plaintiff DEVERS are hereinafter collectively, “Plaintiffs”).
8 Defendants manage multiple beachfront short term rental property units in Oceanside and
9 Carlsbad, California.

10 Plaintiffs claim individual wage and hour, retaliation and wrongful termination claims in
11 this action. Plaintiffs, as representatives for the State of California, also claim for civil penalties
12 pursuant to PAGA on behalf of the State of California and all current and former aggrieved
13 employees of Defendants. The PAGA damage period is as follows: April 6, 2020 to the date this
14 case is dismissed (the “PAGA Period”) for nonexempt aggrieved employees and individuals that
15 Plaintiffs allege are misclassified as independent contractors who worked for Defendant
16 MUTUAL PARTNERS, INC. dba Beachfront Vacation Only Rental (“MPI”). MPI employed a
17 total of 43 nonexempt employees as well as 30 individuals that Plaintiffs allege have been
18 misclassified as independent contractors during the PAGA Period, for a total of 73 individuals,
19 including Plaintiffs.

20 Plaintiffs allege multiple wage and hour Labor Code violations such as nonpayment of
21 minimum wages, overtime wages, meal and rest period premiums, inaccurate wage statements,
22 waiting time penalties, misclassification as independent contractors, and failure to reimburse
23 business expenditures. Defendants deny all allegations.

24 This case represents the pinnacle of the goals of litigation: contentious arms’-length
25 negotiations, production of records, exchanging written discovery, depositions, a full-day
26 mediation with experienced mediator Hon. Leo S. Papas (Ret.) from Judicate West, plus multiple
27 pre-mediation and follow-up sessions with Judge Papas and calls and meetings between counsel
28 directly, which revealed the strengths and weaknesses of each side’s case, leading to a global

1 resolution of all disputes, both the individual claims and the representative PAGA action. In this
2 fashion, the Parties avoid incurring additional attorneys' fees and costs to reach a reasonable
3 settlement prior to further trial preparation and trial.

4 The details of the PAGA claim settlement are a gross settlement sum of \$25,000,
5 allocated as follows: \$21,500 in civil penalties plus \$3,500.00 in PAGA settlement administrator
6 fees. This results in a net gain of \$21,500 for the State of California and the aggrieved
7 employees.

8 Accordingly, Plaintiffs respectfully request that the Court approve this PAGA claim
9 settlement which provides substantial benefits to both the State of California and to the aggrieved
10 employees.

11 **II. PROCEDURAL HISTORY**

12 On June 28, 2021, Plaintiff PEREZ notified the Labor and Workforce Development
13 Agency ("LWDA") regarding his Labor Code claims pursuant to PAGA and filed and served his
14 PAGA Action (LWDA Case No. LWDA-CM-946781-23) (the "PAGA Action" or "PAGA
15 Claim"). Plaintiff PEREZ thereafter filed the complaint on September 13, 2021 with his
16 individual claims and the PAGA Action. On March 25, 2024 Plaintiffs filed a supplemental
17 notice with the LWDA in the PAGA Action adding Plaintiff DEVERS as a PAGA representative
18 and Plaintiffs filed the First Amended Complaint in this case adding Plaintiff DEVERS'
19 individual wage and hour claims, retaliation and wrongful termination claims, and adding him as
20 a representative in the PAGA Claim.

21 The Parties made productive resolution discussions after performing written discovery,
22 taking depositions, and attending a full-day mediation with experienced mediator Hon. Leo S.
23 Papas (Ret.), with several pre-mediation and post-mediation communications with Judge Papas'
24 assistance. The Parties attended a full-day mediation with Judge Papas, where it was not resolved
25 but the Parties made some significant advances in negotiations and in exchange of information.

26 After several post mediation calls and communications through Judge Papas, and calls
27 and an in-person meeting directly between counsel, and after careful consideration of the
28 information produced, the Parties agreed to a settlement of the case in full, including the

individual and PAGA claims. This case will be dismissed in its entirety upon the Court approving the settlement of the PAGA claim.

III. PAGA CLAIMS CANNOT BE SETTLED WITHOUT COURT

APPROVAL

Pursuant to Labor Code Section 2699(1)(2): “The superior court shall review and approve any settlement of any civil action filed pursuant to this part.”

IV. THE COURT HAS WIDE DISCRETION IN APPROVING PAGA PENALTIES THAT ARE BINDING

Pursuant to Labor Code Section 2699(e) the Court has discretion as it pertains to the amount of the penalty and “may award a lesser amount than the maximum civil penalty amount specified by this part, based on the facts and circumstances of the particular case” because “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”

V. THE PROPOSED PAGA CIVIL PENALTIES SETTLEMENT IS REASONABLE GIVEN THAT DEFENDANTS DISPUTE THE VIOLATIONS ALLEGED BY PLAINTIFFS, DEFENDANTS HAVE COOPERATED WITH PLAINTIFFS’ INVESTIGATION, DEFENDANTS HAVE MADE CORRECTIVE MEASURES, AND THAT THE PARTIES WOULD LIKE TO COMPROMISE TO SAVE ON FEES AND COSTS THAT WOULD INCREASE SIGNIFICANTLY UPON FURTHER LITIGATION

“[The] Legislature's purpose in enacting the PAGA was to augment the limited enforcement capability of the Agency by empowering employees to enforce the Labor Code as representatives of the Agency.” *Iskanian*, supra, 59 Cal.4th at 383.

Labor Code section 2699 allows for a maximum penalty of one-hundred dollars (\$100) for the first pay period in which there was violation of applicable sections and two-hundred dollars (\$200) per pay check for each pay period thereafter pursuant to subsection (f)(2), “except those for which a civil penalty is specifically provided” pursuant to subsection (f).

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1 In the instant action there were five main categories of violations claimed by Plaintiffs:
2 minimum wage violations, meal periods violations, rest period violations, misclassification as
3 independent contractors, and records violations.

4 Labor Code section 2699.3 requires that the representative employee(s) “give written
5 notice by online filing with the Labor and Workforce Development Agency and by certified mail
6 to the employer of the specific provisions of this code alleged to have been violated, including
7 the facts and theories to support the alleged violation.” Labor Code section 2699.3(1)(A).
8 Plaintiff gave said notice on June 28, 2021, and the LWDA did not respond. See Decl. of Ruiz-
9 Velasco, ¶2.

10 The Parties were able to compromise the claims reaching a global confidential settlement
11 of the entire action, including the individual retaliation, wrongful termination, and wage and hour
12 claims and the PAGA Action. A total of twenty five thousand dollars (\$25,000.00) has been
13 deemed and agreed by the Parties to be an appropriate allotted amount to settle the 7th cause of
14 action for PAGA civil penalties. This gross settlement amount for the PAGA Action is divided as
15 follows as agreed by the Parties: twenty thousand dollars (\$21,500.00) in civil penalties, plus
16 \$3,500 for settlement administrator fees for distribution of the PAGA civil penalties. The Parties
17 have decided to hire Phoenix Settlement Administrators as the PAGA civil penalties
18 administrator to distribute the PAGA civil penalties to the California LWDA and to the
19 aggrieved employees who worked during the PAGA Period.

20 Here, Defendants own and operate MPI, a company that manages multiple property units
21 located on the beach in Oceanside and Carlsbad, California. Plaintiffs claim that Defendants
22 underpaid their and other employees’ hours worked and earned, failed to fully relieve them of
23 their duties during their meal and rest periods, misclassified several of them as independent
24 contractors, and caused records violations as a result. Plaintiff PEREZ also claims that he was
25 terminated in retaliation for reporting that a former coworker assaulted him with a knife. Plaintiff
26 DEVERS claims that he was terminated in retaliation for making requests to be properly
27 classified as a W-2 employee as opposed to being misclassified as an independent contractor.
28 Defendants deny all wrongdoing and any violations that could stem from the claims.

1 All of Plaintiffs' individual causes of action along with the PAGA cause of action were
2 resolved in a confidential settlement on or about April 4, 2025. Plaintiffs do not object to the
3 \$25,000 total amount to settle the PAGA Action because (1) Defendants have cooperated with
4 Plaintiffs' investigation, (2) the Defendants dispute all of the claimed violations, (3) after this
5 case was filed, the Defendants have made corrective measures, and (4) the Parties have decided
6 to compromise to save on attorneys' fees and costs because further litigating this case would
7 significantly increase fees and costs for the Parties making settlement less likely.

8 The PAGA Period was used as the time period in question to reflect the one-year statute
9 of limitations for penalties from the time of filing the written PAGA notice with the LWDA to
10 the time this case is dismissed (see above). Of the twenty thousand dollars (\$20,000.00)
11 apportioned for PAGA civil penalties, fifteen thousand dollars (\$15,000.00) or seventy-five
12 percent (75%) will be paid to the California Labor Workforce Development Agency ("LWDA")
13 and five thousand dollars (\$5,000.00) or twenty-five percent (25%) will be paid to the aggrieved
14 employees.

15 The Parties were able to reach a compromised confidential settlement after multiple
16 rounds of written discovery, several depositions, a full-day mediation with experienced mediator
17 Hon. Leo S. Papas (Ret.), plus multiple pre and post-mediation communications and calls
18 through Judge Papas and with Defendants' counsel directly required to finally settle all causes of
19 action for the Plaintiffs, including their individual eight causes of action as follows for (1) failure
20 to pay wages, (2) failure to timely furnish accurate itemized wage statements in violation of
21 Labor Code section 226(a), (3) unfair business practices, (4) waiting time penalties per Labor
22 Code section 203, (5) meal and rest period violations, (6) failure to timely provide copy of
23 personnel file and payroll records and failure to maintain accurate time records, (8) wrongful
24 termination in violation of public policy, and (9) wrongful termination and retaliation in violation
25 of Labor Code sections 98.6, 1102.5, along with the representative seventh (7th) cause of action
26 for PAGA civil penalties.

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I, Rodolfo Ruiz-Velasco, declare as follows:

2. On or about June 28, 2021, on behalf of Plaintiff JOSE PEREZ, I sent Defendants MUTAL PARTNERS, INC. dba BEACHFRONT VACATION ONLY RENTAL (“MPI”), DAVID PAUL FISCHBACH, ADELE NELSON FISCHHBACH, and PETER RODRIGUEZ (collectively, “Defendants”) via certified mail a written notice of Plaintiff’s intent to bring a claim for PAGA civil penalties, and filed it with the California Labor Workforce Development Agency (“LWDA”) via online submission through their website (A true and correct copy of the written notice for the PAGA claim is attached to the First Amended Complaint in this action, see Docket No. 85, Exhibit 1). The LWDA provided Case No. LWDA-CM-836287-21 (the “PAGA Action”). The LWDA did not respond within the requisite 65 days.

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1 4. On or about March 25, 2024, Plaintiff DEVERS filed a supplemental notice with
2 the LWDA in the PAGA Action adding himself as a PAGA representative and claiming similar
3 wage and hour claims to Plaintiff PEREZ and in addition claiming that he and other individuals
4 were misclassified as independent contractors, and on March 25, 2024 Plaintiffs filed a First
5 Amended Complaint in this case adding Plaintiff DEVERS as a Plaintiff and adding his
6 individual wage and hour, retaliation and wrongful termination claims, and adding him as a
7 PAGA Claim representative. Defendants also dispute these claims.
8

9 5. Despite the above differences and disputes regarding the viability of said claims,
10 on or about April 4, 2025, the Parties were able to reach a compromised confidential settlement
11 after the Parties exchanged written discovery and documents, took initial depositions, and after a
12 full-day mediation with highly experienced mediator Hon. Leo S. Papas (Ret.) from Judicate
13 West, plus multiple pre and post-mediation communications and calls and meetings through
14 Judge Papas and with Defendants' counsel directly required to finally settle all causes of action.
15 Upon Court approval of this settlement, Plaintiffs will request to dismiss this case in its entirety.
16

17 6. \$25,000 has been agreed to settle the PAGA claim, where this gross amount is
18 allocated as follows: \$21,500 in civil penalties plus \$3,500 for civil penalties settlement
19 administrator fees. This results in a net gain of \$21,500 for the State of California and the
20 aggrieved employees.
21

22 7. Of the twenty one thousand five hundred dollars (\$21,500), sixteen thousand one
23 hundred twenty five dollars (\$16,125) or seventy-five percent (75%) will be paid to the
24 California Labor Workforce Development Agency ("LWDA") and five thousand three hundred
25 seventy five dollars (\$5,375) or twenty-five percent (25%) will be paid to the three aggrieved
26 employees.
27

28 /././

1 I declare under penalty of perjury under the laws of the state of California that foregoing
2 is true and correct and based upon my personal knowledge.

3 Dated: April 22, 2025

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6 Rodolfo Ruiz-Velasco, Esq.
7 Attorney for Plaintiffs,
8 Jose Perez and Thomas F. Devers
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Perez, et al. v. Mutual Partners, Inc., et al.
Superior Court Case No. 37-2021-00038932-CU-WT-NC

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over eighteen years of age and not a party to this action; my business address is 600 W. Broadway Suite 700, San Diego, California, 92101. On **April 22, 2025**, I served a true copy of the foregoing document(s):

STIPULATION RE: COURT APPROVAL OF SETTLEMENT OF PLAINTIFFS' PRIVATE ATTORNEYS GENERAL ACT ("PAGA") CLAIM; [PROPOSED] ORDER; MEMORANDUM OF POINTS AND AUTHORITIES, AND DECLARATION OF RODOLFO RUIZ-VELASCO IN SUPPORT THEREOF

on all interested parties in this action as follows:

Brian Dawson Brendan Ozanne Dawson & Ozanne 5755 Oberlin drive, Suite 301 San Diego, CA 92121 brian@dawon-ozanne.com brendan@dawson-ozanne.com mshaffer@dawon-ozanne.com	Attorneys for Defendants MUTUAL PARTNERS, INC., DAVID PAUL FISCHBACH, ADELE NELSON FISCHBACH, and PETER RODRIGUEZ
California Labor Workforce Development Agency 455 Golden Gate Ave, 9th Floor San Francisco, CA 94102 (by online submission only at https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)	California Labor Workforce Development Agency (LWDA)

☒ **E-mail service/E-service:** I have e-served the above-documents to the e-mail(s) of counsel above.

☒ **Online submission:** I submitted the above-documents online via the website above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **April 22, 2025**.


Rodolfo Ruiz-Velasco