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ATTORNEYS FOR PLAINTIFF, ROSHAWN COLDCLEUGH

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SOLANO
UNLIMITED JURISDICTION

ROSHAWN COLDCLEUGH,

PLAINTIFF,

v.

SAK HOSPITALITY, INC., A
CALIFORNIA CORPORATION; AND DOES 1-
10, INCLUSIVE,

DEFENDANTS.

) CASE No. FCS054652

) **PLAINTIFF'S MEMORANDUM OF**
) **POINTS AND AUTHORITIES IN**
) **SUPPORT OF UNOPPOSED MOTION**
) **FOR APPROVAL OF PAGA**
) **SETTLEMENT**

) **Date: February 2, 2022**

) **Time: 9:30 a.m.**

) **Dept: 22**

) **Judge: Hon. Alesia Jones**

) **Trial Date: None**

I. INTRODUCTION

The Court should approve the Private Attorneys General Act (“PAGA”) settlement reached in this case because it is fair, adequate and reasonable.

In this case, Plaintiff Roshawn Coldcleugh (“Coldcleugh”) alleges that Defendant SAK Hospitality, Inc. (“SAK”) violated the PAGA by providing inaccurate wage statements, failing to pay overtime wages, failing to timely pay wages when employment ends, and failing to provide meal and rest periods or premium pay for noncompliant meal and rest periods. While Coldcleugh believes she would have ultimately prevailed in this action, SAK asserted defenses to the foregoing claims, as set forth herein.

Taking into account the defenses raised by SAK and her own independent analysis of the thorough discovery produced, Coldcleugh and her counsel determined this settlement is a good result for the State of California and the PAGA Aggrieved Employees. Accordingly, Coldcleugh respectfully requests that the Court approve this PAGA settlement in its entirety.

II. STATEMENT OF FACTS

A. PAGA Notice and Allegations in this Case

On or about January 25, 2020, Coldcleugh exhausted her PAGA administrative notice requirements by filing a letter with the Labor Workforce Development Agency (“LWDA”). (Woodall Decl. in Supp. of Mtn. for Approval of PAGA Sett. (“Woodall Decl.”), ¶¶ 2-3, Exh. 1.) In her PAGA notice and the subsequent complaint filed in this case on April 6, 2020, Coldcleugh alleged the following violations against SAK:

(1) failure to pay overtime wages at 1.5 times the regular rate of pay for work performed in excess of 8 hours per day or 40 hours per week, in violation of Labor Code sections 510, 558 and 1194; (2) failure to provide Coldcleugh and similarly aggrieved employees with 30-minute meal periods after 5 hours of work or premium pay for noncompliant meal periods, in violation of Labor Code sections 226.7 and 512; (3) failure to provide Coldcleugh and similarly aggrieved employees with a 10-minute rest period for every four hours of work or major fraction thereof or premium pay for noncompliant rest

1 periods, in violation of Labor Code sections 226.7; (4) failure to provide Coldcleugh and
2 similarly aggrieved employees with proper, itemized wage statements containing the
3 correct rates of pay, the correct gross and net wages and the correct number of hours
4 worked at each rate of pay, in violation of Labor Code section 226; (5) failure to pay
5 Coldcleugh and similarly aggrieved employees all wages earned and unpaid at the time of
6 discharge or resignation, including overtime wages, in violation of Labor Code sections
7 201-203¹. (Woodall Decl., Exh. 1; see Complaint.)

8 In addition to her PAGA claims, Coldcleugh also brought individual claims
9 seeking her unpaid overtime wages under Labor Code sections 510 and 1194, premium
10 pay for missed and noncompliant meal and rest periods under Labor Code sections 226.7
11 and 512, waiting time penalties for the failure to pay all wages at the end of employment
12 under Labor Code sections 201-203, and penalties for inaccurate wage statements under
13 Labor Code sections 226. (Woodall Decl., ¶ 4.)

14 **B. Thorough Discovery**

15 Before the parties in this case engaged in a mediation session in late October,
16 2021, SAK produced thorough discovery. Specifically, in response to formal discovery
17 requests, SAK produced the following discovery: (1) a random sample of wage
18 statements and time entry records of approximately 20 PAGA Affected Employees for a
19 three-month period during the PAGA period; (2) policies used during the PAGA period
20 that relate to the allegations asserted; (3) the number of PAGA Affected Employees who
21 worked during the PAGA period (approximately 110); and (4) the number of pay periods
22 worked by PAGA affected employees during the PAGA period (approximately 1,238).
23 (Woodall Decl., ¶ 5.) Defendant also provided additional information relating to its
24 financial condition. (*Id.*) After receiving the random sample, counsel for Coldcleugh
25 conducted extensive analysis regarding the same. (*Id.*)

26
27 ¹ The Complaint erroneously includes allegations regarding exempt employees and
28 violation of California Labor Code sections 1174, 1174.5, 1197, 1197.1 and 2802. The Parties
agree that any and all allegations pursuant to these provisions in the Complaint are inapplicable
and should be stricken.

C. Litigation Risks

Upon review and analysis of the discovery produced and the legal arguments of SAK, Coldcleugh and her counsel determined there were risks relating to her PAGA claims.

With respect to the missed meal and rest period claims, Labor Code §§ 226.7 and 512 provide that non-exempt employees are entitled to a 30-minute meal period after 5 hours of work and a 10-minute rest period for every 4 hours of work or major fraction thereof, and if employees are not provided compliant meal or rest periods, they are entitled to premium pay. SAK contends its policies authorize and permit non-exempt employees to take meal and rest periods, in accordance with the standard articulated in *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1040 (2012). (Woodall Decl., ¶ 7.) Moreover, SAK argues the meal and rest period claims are not manageable and cannot proceed on a representative basis under *Wesson v. Staples the Office Superstore, LLC*, 68 Cal.App.5th 746 (2021); *Salazar v. See's Candies*, 64 Cal. App. 5th 85 (2021).

Regarding the unpaid overtime wage claim, Labor Code §§ 510 and 1194 provide that employees are entitled to 1.5 times the regular rate of pay for hours worked in excess of 8 hours per day or 40 hours per week, along with 2 times the regular rate of pay for hours worked in excess of 12 hours per day. SAK argues Coldcleugh and PAGA Aggrieved Employees did not actually work all hours they were clocked in. (Woodall Decl., ¶ 8.) Further, SAK argues that Coldcleugh and PAGA Aggrieved Employees are not entitled to penalties of \$100 per pay period, but only \$50 per pay period under Labor Code section 558. *ZB, N.A. and Zions Bancorporation*, 8 Cal. 5th 175, 187 (2019).

With respect to the inaccurate wage statement claim, Labor Code § 226 provides that employees should receive wage statements that contain the correct gross and net wages and the correct number of hours worked at each rate of pay, along with other information. SAK contends this claim is derivative of the unpaid overtime wage claim and thus, the same defenses apply. *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App.5th

1 1308 (2018). (Woodall Decl., ¶ 9.)

2 Labor Code §§ 201-203 provide that employees must be immediately paid all
3 wages owed at the termination of employment or within 72 hours of a notice of
4 resignation. While Coldcleugh contends SAK violated the foregoing provisions, SAK
5 argues this claim is derivative of the unpaid overtime wage claim and thus, the same
6 defenses apply. (Woodall Decl., ¶ 10.)

7 Lastly, SAK was prepared to defend against the claims by arguing it should not be
8 assessed any PAGA penalties or greatly reduced PAGA penalties because its alleged
9 conduct, even if it should constitute a violation which SAK vehemently denies, was not
10 intentional and awarding the maximum penalties would be unjust, arbitrary and
11 oppressive, or confiscatory under Labor Code § 2699(e)(2). (Woodall Decl., ¶ 11.)

12 **D. Settlement Reached**

13 Coldcleugh and SAK participated in lengthy mediation session with Harris
14 Weinberg, a respected wage and hour mediator, in late October, 2021. (Woodall Decl.,
15 ¶¶ 12-13.) At the end, the parties agreed Coldcleugh would settle the PAGA claims for
16 \$140,000.² (*Id.*, Exh. 2.) The parties agreed that of this gross settlement amount, eighty
17 thousand dollars (\$80,000) would be paid in attorney's fees and litigation costs to
18 Coldcleugh's counsel relating to prosecution of Coldcleugh's PAGA and individual
19 claims, the settlement administrator (Simpluris) would be paid \$3,200, and the remaining
20 amount (Net Settlement Amount) would be paid to the State of California and PAGA
21 Affected Employees. (*Id.*) Pursuant to the PAGA (Labor Code § 2699(i)), seventy-five
22 percent (75%) of the Net Settlement Amount will be paid to the Labor Workforce
23 Development Agency and twenty-five percent (25%) of the Net Settlement Amount will
24 be paid to PAGA Affected Employees. (*Id.*) The amount paid to each PAGA Affected
25 Employee will be determined by (1) dividing the Net Settlement Amount by the total
26 number of pay periods worked by PAGA Affected Employee during the PAGA period

28 ² At the mediation, the parties agreed to resolve Coldcleugh's individual wage and
hour claims against SAK, in a separate confidential agreement. (Woodall Decl., ¶ 14.)

(January 25, 2019 to date of court approval) to arrive at a Pay Period Amount, and (2) multiplying that Pay Period Amount by the number of pay periods worked by the PAGA Affected Employee. The parties further agreed that if any PAGA Affected Employees fail to cash their checks after 180 days, the unclaimed funds would be tendered a cy pres recipient(s), mutually agreed by the Parties or as ordered by the Court. (*Id.*)

III. DISCUSSION

A. The PAGA Settlement Should Be Approved By The Court Because It Is Fair, Adequate And Reasonable

The parties reached a settlement that is fair, adequate and reasonable given the potential penalties and the risks involved with the litigation.

California Labor Code § 2699(l)(2) provides that the court shall review and approve any PAGA settlement.³ The California Supreme Court has determined class certification is not necessary for PAGA cases. *Arias v. Superior Court* (2009) 46 Cal.4th 969, 981. The PAGA statute authorizes courts to award a lesser amount than the maximum civil penalties if, based on the facts and circumstances of the case, to do otherwise would be unjust, arbitrary and oppressive, or confiscatory. Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Management* (2012) 203 Cal.App.4th 1112, 1136 (the standard for reviewing a trial court's reduction of PAGA civil penalties is abuse of discretion).

Courts have repeatedly approved PAGA settlements that represent a small fraction of the maximum potential civil penalties and overall settlement. *Kuang Xuan Liu v. Win Woo Trading, LLC*, 2017 U.S. Dist. LEXIS 159384, *9 (N.D. Cal. Sept. 27, 2017) (PAGA settlement approved, which represented 5% of maximum civil penalties); *Turner v. Motel 6 Operating L.P.*, 2018 U.S. Dist. LEXIS 224004, *9, 19 (C.D. Cal. Nov. 6, 2018) (PAGA settlement represented less than 1% of maximum civil penalties);

³ The PAGA also requires that a plaintiff notify the LWDA agency of the settlements, which Coldcleugh has done. (Woodall Decl., ¶ 26, Exh. 5.)

1 *Nordstrom Comm'n Cases*, 186 Cal.App.4th 576, 589 (2010) (no money was allocated to
2 PAGA claims under the settlement); *Smith v. H.F.D. No. 55, Inc.*, 2018 U.S. Dist. Lexis
3 67192, *8 (E.D. Cal. Apr. 20, 2018) (approving \$100 PAGA settlement); *Davis v. Cox*
4 *Commc'ns California, LLC*, 2017 WL 1496407, *1 (S.D. Cal. Apr. 26, 2017) (approving
5 \$4,000 PAGA settlement, which represented a small fraction of total settlement); *Moore*
6 *v. Fitness Int'l, LLC*, 2014 WL 12571448, *5 (S.D. Cal. Jan. 22, 2014) (approving \$2,500
7 PAGA settlement, a small percentage of the total settlement); *Jack v. Hartford Fire Ins.*
8 *Co.*, 2011 WL 4899942, *6 (S.D. Cal. Oct. 13, 2011) (approving \$3,000 PAGA
9 settlement or less than 2.5% of total settlement); *Singer v. Becton Dickinson & Co.*, 2010
10 WL 2196104, *2 (S.D. Cal. June 1, 2010) (approving \$3,000 PAGA settlement, which
11 was approximately 3% of the total settlement and a small fraction of maximum civil
12 penalties); *Hopson v. Hanesbrands Inc.*, 2009 WL 928133, *9 (N.D. Cal. Apr. 3, 2009)
13 (approving \$1,500 PAGA settlement); *Slavkov v. Fast Water Heater Partners I, LP*, 2017
14 WL 3834873, *2 (N.D. Cal. July 25, 2017) (approving \$7,500 PAGA payment, which
15 represented a small fraction of total settlement and maximum PAGA penalties in
16 individual action); *Sarinana v. DS Waters of America, Inc.*, 2014 WL 12709948, *2
17 (N.D. Cal. July 9, 2014) (approving \$5,000 PAGA payment, a small percentage of total
18 settlement and maximum PAGA penalties).

19 Here, Coldcleugh's counsel determined from his review of the sample of wage
20 statements and time entry records that approximately 74% of the pay periods reflect
21 unpaid overtime wages. (Woodall Decl., ¶ 18.) SAK disputes and denies Coldcleugh's
22 alleged finding of the violation. As the inaccurate wage statement and failure to timely
23 pay final wages claims are derivative of the unpaid overtime wage claim, Coldcleugh's
24 counsel determined approximately 74% of pay periods reflect inaccurate wage statements
25 and a similar percentage of former employees were not timely paid final wages. (*Id.*) In
26 addition, Coldcleugh's counsel determined that approximately 88% of the pay periods
27 reflect meal periods that were either not taken, less than 30 minutes or not started within
28 the first 5 hours of work, in violation of Labor Code §§ 226.7 and 512. (*Id.*) As rest

periods do not have to be recorded on time entry records under law, Coldcleugh's counsel was not able to determine how many rest periods were noncompliant. (*Id.*) Given the above, Coldcleugh's counsel determined the maximum, potential PAGA penalties are \$300,308, as set forth below:

- \$91,612 in PAGA penalties for unpaid overtime wage violations (1,238 pay periods x .74 violation rate x \$100 penalty);
- \$91,612 in PAGA penalties for wage statement violations (1,238 pay periods x .74 violation rate x \$100 penalty);
- \$108,944 in PAGA penalties for meal period violations (1,238 pay periods x .88 violation rate x \$100 penalty);
- \$0 in PAGA penalties for rest period violations (1,238 pay periods x .00 violation rate x \$100 penalty); and
- \$8,140 in PAGA penalties for failure to timely pay final wages, including vacation pay (110 former employees x .74 violation rate x \$100 penalty).

(*Id.*)

However, as set forth earlier, SAK raised defenses to each of the foregoing claims and asserted significant financial challenges due to the pandemic. (Woodall Decl., ¶ 19.) Taking into account SAK's defenses and the like, Coldcleugh's counsel believes the realistic PAGA penalties are approximately \$210,215.60 or 70% of the maximum, potential PAGA penalties. (*Id.*) Thus, this settlement represents approximately 67% (\$210,215.60/\$300,308) of the realistic potential recovery, which is an outstanding result for the State of California and the PAGA Affected Employees. (*Id.*)

B. The Attorney's Fees and Costs and Administrator's Costs Are Reasonable

As set forth below, the attorney's fees and costs and the settlement administrator's fee are reasonable.

1. Reasonable Attorney's Fees and Costs

Under Labor Code § 2699(g)(1), reasonable attorney's fees and costs are available to a plaintiff who prevails in a PAGA action. It is also noteworthy that although

1 Coldcleugh does not need court approval to resolve her individual claims, she is entitled
2 to reasonable attorney's fees and costs under Labor Code §§ 1194, 226 and 218.5 relating
3 to her individual wage and hour claims.

4 The lodestar figure is based on the "careful compilation of the time spent and
5 reasonable hourly compensation of each attorney ... involved in the presentation of the
6 case." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-32; see also *Serrano v. Unruh*
7 (1982) 32 Cal.3d 621, 639 ("absent circumstances rendering the award unjust, fees ...
8 ordinarily include compensation for all hours reasonably spent, including those necessary
9 to establish and defend the fee claim."). In the case of a lodestar analysis, the reasonable
10 hourly rate is that prevailing in the community for similar work.⁴ *Ketchum*, 24 Cal.4th at
11 1132. A multiplier is warranted in cases where counsel assumed significant risk and
12 handled complex litigation matters on contingency. *Ketchum*, 24 Cal.4th at 1132-33;
13 *Serrano v. Priest* (1977) 20 Cal.3d 25, 48. Other enhancement factors include the

14 ⁴ Under California law, every hour reasonably spent on a plaintiff's case is compensable:
15 "Absent special circumstances rendering the award unjust, an attorney fee award should
16 ordinarily include compensation for *all* the hours *reasonably spent*, including those relating
17 solely to the fee." *Ketchum, supra*, 24 Cal.4th at 1133. In making that determination, courts
18 must look at "the entire course of the litigation, including pretrial matters, settlement
19 negotiations, discovery, litigation tactics, and the trial itself . . ." *Vo v. Las Virgenes Municipal*
20 *Utility Dist.* (2000) 79 Cal.App.4th 440, 447. Courts in California generally do not require
21 detailed time records and can award fees based on declarations of counsel describing the work
22 they performed and the court's own review of the number of hours reasonably spent. *Syers*
23 *Props. III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 698 (prevailing attorneys bear burden of
24 establishing entitlement to an award and must document the appropriate hours expended and
25 hourly rates); *Laffitte*, 1 Cal. 5th at 574 ("trial courts conducting lodestar cross-checks have
26 generally not been required to closely scrutinize each claimed attorney-hour, but have instead
27 used information on attorney time spent to "focus on the general question of whether the fee
28 award appropriately reflects the degree of time and effort expended by the attorneys.") Time
records are prima facie evidence that counsel's hours were reasonable. *Hadley v. Krepel* (1985)
167 Cal.App.3d 677, 682; see *Horsford v. Bd. of Trustees* (2005) 132 Cal.App.4th 359, 396 ("the
verified time statements of the attorneys, as officers of the court, are entitled to credence in the
absence of a clear indication the records are erroneous").

Lodestar hourly rates should be within the range of rates charged by and awarded to
attorneys of comparable experience, reputation, and ability for similar work, i.e., complex class
action litigation. *Children's Hospital and Med. Center v. Belshe* (2002) 97 Cal.4th 740, 783
(affirming rates that were "within the range of reasonable rates charged by and judicially
awarded comparable attorneys for comparable work."); *Serrano*, 32 Cal.3d at 643. When
sufficient evidence has been presented that the hourly rates requested are within the range of
rates charged by and awarded to attorneys of comparable experience, reputation, and ability for
comparably complex litigation, no extrinsic evidence is necessary. *Id.*

1 novelty and difficulty of the questions involved, the skill displayed in presenting them,
2 and the extent to which the nature of the litigation precluded other employment by the
3 attorneys. *Ketchum*, 24 Cal.4th at 1133 (citing *Serrano*, 20 Cal.3d at 49).

4 Here, the \$80,000 in attorney's fees and costs agreed to by the parties are
5 reasonable. Kevin Woodall of Woodall Law Offices has spent 129.6 hours and plans to
6 spend another 10-15 hours prosecuting this action. (Woodall Decl., ¶¶ 23-24, Exh. 4.)
7 During this case, Mr. Woodall performed a number of tasks to advance the litigation and
8 resolve this matter including, but not limited to, the following: (1) preparation of the
9 complaint; (2) preparation of the PAGA notice; (3) preparation of formal discovery
10 requests; (4) review and analysis of documents, information and other discovery provided
11 by SAK; (5) preparation of Case Management Conference statements and attend Case
12 Management Conferences; (6) preparation of meet and confer communications regarding
13 SAK's discovery responses; (7) research regarding various issues in the case; (8)
14 preparation of opposition to SAK's motion to bifurcate and attend hearing regarding the
15 same; (9) draft discovery responses to 5 sets of discovery propounded by SAK; (10)
16 preparation of request for informal discovery conference and attend informal discovery
17 conference; (11) numerous communications with SAK's counsel regarding discovery,
18 motions, settlement and various issues; (12) preparation of a stipulated protective order;
19 (13) numerous discussions with Coldcleugh regarding all aspects of the case; (13)
20 preparation of the mediation brief and exhibits; (14) attend full-day mediation; (15) assist
21 in the preparation of the settlement agreement; (16) obtain quotes from proposed
22 settlement administrators; and (17) preparation of this motion and supporting
23 declarations. (*Id.*)

24 In 2020, the San Francisco Superior Court determined that Mr. Woodall's
25 reasonable hourly rate is \$845. In the past, this other courts have approved similar hourly
26 rates for Kevin Woodall. (Woodall Decl, ¶¶ 21-22.)⁵

27 ⁵ Mr. Woodall's rate is consistent with noted sources, such as the 2021-2022
28 Updated Laffey Matrix ("Laffey Matrix"). (Woodall Decl, ¶ 21, Exh. 3.) According to the
Laffey Matrix, a reasonable rate for an attorney with over 20 years of experience, such as Mr.

1 As Mr. Woodall has spent and plans to spend 144.6 hours prosecuting this action,
2 at his reasonable hourly rate of \$845, the reasonable attorney's fees in this matter are
3 \$122,187. Thus, the reasonable attorney's fees alone exceed the \$80,000 agreed to by the
4 parties to for attorney's fees and costs.

5 In addition to incurring attorney's fees, Coldcleugh's counsel has incurred and will
6 incur \$5,012.44 in costs, including filing fees, online research, postage, and the
7 mediator's fee. (Woodall Decl, ¶ 25.)

8 **2. The Administrator's Fee Is Appropriate**

9 The parties sought and obtained multiple quotes from potential settlement
10 administrators. (Woodall Decl., ¶ 23.) Simpluris provided a quote of approximately
11 \$3,200 for the estimated costs associated with administering the settlement, which was
12 lower than another quote. (*Id.*) Given this quote and positive, past experiences working
13 with Simpluris by the Parties' counsel, Simpluris was selected as the administrator. (*Id.*)
14 Thus, the agreed upon administrator's fee of \$3,200 is reasonable.

15 **IV. CONCLUSION**

16 For the reasons above, the PAGA settlement is fair, adequate and reasonable and
17 this motion should be granted in its entirety.

18 DATE: DECEMBER 28, 2021

WOODALL LAW OFFICES

19
20
21 BY: 

22 KEVIN F. WOODALL
23 ATTORNEYS FOR PLAINTIFF, ROSHAWN
COLDCLEUGH AND PAGA REPRESENTED
EMPLOYEES

24
25 Woodall, is \$913. (*Id.*) Courts have routinely determined that the reasonable hourly rate is
26 found in the Laffey Matrix. *Kempf v. Barrett Bus. Servs.* (N.D. Cal. Nov. 20, 2007) 2007 U.S.
27 Dist. LEXIS 89447; *Long v. Stanley Black & Decker, Inc.* (S.D. Cal. Apr. 23, 2015) 2015 U.S.
28 Dist. LEXIS 53595 at *13-14 (applying 2014 Laffey Matrix, \$771 per hour for an attorney with
20 years of experience). Further, California courts have determined that the rate sought by
Coldcleugh's counsel is reasonable. *Cotter v. Lyft Inc.* (N.D. Cal. Mar. 16, 2017) 2017 WL
1033527 (approving hourly rates of \$800 for attorneys with 21 years of experience); *Prison
Legal News v. Schwarzenegger* (9th Cir. 2010) 608 F.3d 446, 455 (district court did not abuse its
discretion in awarding 2008 hourly rates for Bay Area attorneys of up to \$875 for a partner).