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9 Attorneys for Plaintiff SIMONE N. ROGERS, in a Representative capacity only, and on behalf of
10 other members of the general public similarly situated

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF SAN DIEGO**

13 SIMONE N. ROGERS, in a Representative
14 capacity only, and on behalf of other
15 members of the general public similarly
16 situated,

17 Plaintiff

18 v.

19 CONAM MANAGEMENT CORP., a
20 California Limited Liability Company; and
21 DOES 1-10, inclusive

22 Defendant

CASE NO. 37-2020-00013563-CU-OE-CTL

(Representative Action only)

**DECLARATION OF ERIC K. YAECKEL
IN SUPPORT OF PLAINTIFF'S
SUPPLEMENTAL BRIEFING IN SUPPORT
OF MOTION FOR APPROVAL OF PAGA
SETTLEMENT**

Date: September 27, 2021

Time: 9:30 a.m.

Judge: Hon. Richard S. Whitney

Dept.: C-68

1 I, Eric K. Yaeckel, hereby declare as follows:

- 2 1. I am an attorney licensed to practice law before this Court and am an employed at the law firm
3 of Sullivan & Yaeckel Law Group, APC, attorneys of record for Plaintiff in the
4 above-captioned matter. I make this declaration regarding Plaintiff's Request for PAGA
5 Approval or an Order Shortening Time to Hear PAGA Approval. .
- 6 2. I have personal knowledge of the facts set forth in this declaration and, if called to testify as
7 a witness, I could and would do so.
- 8 3. As detailed in prior briefing to this Court, the LWDA received multiple rounds of notice of this
9 Settlement. (See ROA # 65 at ¶¶ 5-9). Each time a confirmation was received from the LWDA.
10 To date, there has been no objection or opposition to the settlement from the LWDA.
11 Plaintiff's counsel has also provided the LWDA copies of this supplemental briefing and notice
12 of the September 27, 2021 hearing.
- 13 4. The release of claims in this matter is narrowly tailored in accordance with controlling law so
14 that the aggrieved employees do not lose their right to assert any claims in their individual
15 capacities. Only claims for PAGA penalties are being released. (See Doc. # 56: Exhibit 1 at
16 ¶ 41).
- 17 5. The plaintiffs in the *Ricks* matter (collectively referred to herein as "Ricks") have stated
18 multiple objections that have delayed this matter. Most telling, *Ricks* stated an (1) intention to
19 bring a formal motion to intervene and (2) informed this Court that they needed to conduct
20 discovery on the settlement. However, the Ricks parties ***failed*** to calendar and file a formal
21 intervention motion and ***failed*** to ever serve any discovery regarding the settlement.
- 22 6. To confirm what has already been set forth in prior briefing, the parties never "reduced" the
23 amount of the PAGA settlement and Plaintiff does not seek any individual "enhancement"
24 (beyond the requested \$5,000 enhancement) for her role in this case. Instead a settlement was
25 reached of PAGA claims and of separate individual claims, so that Defendant could avoid two
26 follow up lawsuits that had nothing to do with PAGA. This was all achieved through an
27 adversarial arms length negotiation presided over by an experienced wage and hour mediator
28

(Jill Sperber, Esq.) of Judicate West.

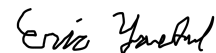
7. The Ricks parties know this and are deliberately mis-characterizing the events. It is clearly written in the MOU (cited by Ricks) that Plaintiff Rogers (and another third party Ms. Shelley) will receive separate individual settlements, “in exchange for each Plaintiff executing a general release of all and any claims (known or unknown) against Defendant, including a Civil Code §1542 waiver.” Thus, the individuals are giving up all rights to sue Defendants (even on claims **unrelated** to this action), and the remaining employees are not doing so. Thus, the repeated attempts to mis-characterize these settlements as secret “enhancements,” or somehow suggest something nefarious, is baseless.
8. Prior to engaging in mediation, our office secured all policies at issue, reviewed time and payroll data and confirmed policies and payroll practices were applicable cross the various job positions.
9. Defendant presented numerous defenses to both liability and manageability, especially given that the CONAM non-exempt employees had diverse roles and worked in various locations across the state. Plaintiff was able to provide evidence of some potential meal period violations, but Defendant countered that it had compliant policies which provided for all breaks due.
10. Investigations completed by Plaintiff’s counsel revealed some instances of uncompensated work and overtime rate of pay issues. However, these investigations also revealed that the "rate of violation" by Defendant was significantly less than 100%. On many occasions, it appears that Defendant did, in fact, comply with the law with regards to the claims made.
11. Defendant also contends that it maintained compliant policies, compensated employees for all time worked, paid meal break premiums, and did not require or permit off the clock work for any reason. Further, Defendant contends that to the extent off the clock work occurred, there is no evidence that it knew or should have known about the alleged off the clock work.
12. Our office has direct experience with the Court's discretion to significantly reduce the award of PAGA penalties pursuant to California Labor Code section 2699(e)(2). Our office

1 experienced the "Post-Trial" mitigation of "PAGA" penalties in *Carrington v. Starbucks Corp.*
2 (2018) 30 Cal.App.5th 504. (*Id.*) In *Carrington*, the Honorable Katherine A. Bacal
3 significantly mitigated PAGA penalties (\$5 per violation), due to the efforts made by the
4 employer to attempt to comply with the law.

5 13. Our office agrees with Her Honor, and with the provision of the Labor Code, that penalties
6 should be mitigated where violations are minimal (or rare), or where the employer makes
7 significant efforts to comply with the Labor Code. There was certainly evidence in this case
8 that even if some violations were perceived, that there had nonetheless been an effort from the
9 employer to attempt to comply with the law.

10 14. All of the above was considered and factored into our analysis of the claims. Given the
11 guaranteed recovery, and limited release of claims, our office believe this is more than an
12 adequate settlement amount in a PAGA case.

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17 I declare under penalty of perjury under the laws of the State of California that the foregoing
18 is true and correct. Executed this 20th day of September, 2021 at San Diego, California.

19
20 

21
22 _____
ERIC K. YAECKEL