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Attorneys for Plaintiffs and the Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

MARIA SANCHEZ, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

vs.

LODI MEMORIAL HOSPITAL
ASSOCIATION, INC., a California
corporation; ADVENTIST HEALTH
SYSTEM/WEST, a California corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: STK-CV-UOE-2019-09557

(Assigned to the Hon. Roger Ross, Dept. 11B)

**DECLARATION OF NICHOLAS
ROSENTHAL IN SUPPORT OF PLAINTIFFS'
MOTION TO APPROVE SETTLEMENT
AGREEMENT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT**

Date: November 3, November 4, November 5,
November 6, or November 10, 2020

Time: 9:00 a.m.

Dept.: 11B

Complaint Filed: July 24, 2019

FAC Filed: October 10, 2019

SAC Filed: August 28, 2020

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I, Nicholas Rosenthal, declare as follows:

1. I am an attorney at law, duly licensed to practice before all Courts in the State of California, and am with the law firm Diversity Law Group, P.C., counsel of record for Plaintiff Maria Sanchez, Eric Ridgeway, Michelle Bueno, Cindy Javier, Deborah Patterson, Monica Barajas, and Mary Gallegos (collectively, “Plaintiffs”). I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

PROCEDURAL HISTORY

2. From the inception of the case, Plaintiffs' counsel has zealously represented the interests of the aggrieved employees.

3. On or about July 9, 2019, Plaintiff Maria Sanchez submitted written notice under Labor Code section 2699.3 (the “PAGA Notice”) to the LWDA and defendants. As set forth in the PAGA Notice, Plaintiff Sanchez alleged that defendants failed to provide wage statements that identified the correct hourly rate of pay for overtime wages and the correct total hours worked when overtime and/or shift differential wages were paid in violation of California Labor Code section 226(a).

4. On July 24, 2019, Plaintiff Maria Sanchez filed a putative class and representative action complaint against Defendants Lodi Memorial Hospital Association, Inc. and Adventist Health System/West in the Superior Court of California, County of San Joaquin (the “Action”). On October 4, 2019, Plaintiff Sanchez filed a first amended representative action complaint, alleging a single cause of action for violation of Labor Code section 2698, *et seq.*, predicated on an underlying Labor Code section 226(a) violation.

5. Thereafter, Plaintiff Sanchez propounded written discovery upon defendants, including multiple sets of requests for production of documents, special and form interrogatories, and requests for admissions, regarding defendants' payroll practices and procedures, data regarding the number of aggrieved employees and wage statements at issue, and other information.

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7. The *Ridgeway* parties engaged in extensive motion practice and written discovery. Plaintiff Ridgeway propounded multiple sets of requests for production of documents, special interrogatories, and requests for admissions upon defendants, reviewed defendants' voluminous document production, and took the depositions of several fact witnesses, including defendants' persons most knowledgeable. Plaintiff Ridgeway also provided sworn testimony in a deposition and issued subpoenas to third party witnesses located in the State of Texas.

8. On March 15, 2019, Plaintiff Michelle Bueno filed a putative class action complaint against Defendant St. Helena Hospital in the Superior Court of California, County of Napa. Plaintiff Bueno amended her complaint on May 3, 2019, alleging a single cause of action for violation of Labor Code section 2698, *et seq.*, predicated on an underlying Labor Code section 226(a) violation. Plaintiff Bueno's first amended complaint alleges similar claims against related defendants as those alleged in Plaintiff Sanchez's first amended complaint.

Javier v. San Joaquin Community Hospital

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1 System/West in the Superior Court of California, County of Kern. Plaintiff Javier amended her
2 complaint on October 4, 2019, alleging a single cause of action for violation of Labor Code
3 section 2698, *et seq.*, predicated on an underlying Labor Code section 226(a) violation. Plaintiff
4 Javier's first amended complaint alleges similar claims against related defendants as those
5 alleged in Plaintiff Sanchez's first amended complaint.

6 11. Plaintiff Javier propounded written discovery upon defendants, including multiple
7 sets of requests for production of documents, special interrogatories, and requests for admissions,
8 regarding defendants' payroll practices and procedures, data regarding the number of aggrieved
9 employees and wage statements at issue, and other information.

10 **Patterson v. Sonora Community Hospital**

11 12. On August 30, 2019, Plaintiff Deborah Patterson filed a putative class and
12 representative action complaint against Defendants Sonora Community Hospital and Adventist
13 Health System/West in the Superior Court of California, County of Calaveras. Plaintiff Patterson
14 filed an amended complaint on April 20, 2020, alleging a single cause of action for violation of
15 Labor Code section 2698, *et seq.*, predicated on an underlying Labor Code section 226(a)
16 violation. Plaintiff Patterson's first amended complaint alleges similar claims against related
17 defendants as those alleged in Plaintiff Sanchez's first amended complaint.

18 13. Plaintiff Patterson propounded written discovery upon defendants, including
19 multiple sets of requests for production of documents, special interrogatories, and requests for
20 admissions, regarding defendants' payroll practices and procedures, data regarding the number
21 of aggrieved employees and wage statements at issue, and other information.

22 **Barajas v. White Memorial Medical Center**

23 14. On September 30, 2019, Plaintiff Monica Barajas filed a representative action
24 complaint against Defendants White Memorial Medical Center and Adventist Health
25 System/West in the Superior Court of California, County of Los Angeles, alleging a single cause
26 of action for violation of Labor Code section 2698, *et seq.*, predicated on an underlying Labor
27 Code section 226(a) violation. Plaintiff Barajas' complaint alleges similar claims against related
28 defendants as those alleged in Plaintiff Sanchez's first amended complaint.

1 15. Plaintiff Barajas propounded written discovery upon defendants, including
2 multiple sets of requests for production of documents, special interrogatories, and requests for
3 admissions, regarding defendants' payroll practices and procedures, data regarding the number
4 of aggrieved employees and wage statements at issue, and other information.

5 **Gallegos v. Hanford Community Hospital**

6 16. On February 24, 2020, Plaintiff Mary Gallegos filed a putative class and
7 representative action complaint against Defendants Hanford Community Hospital and Adventist
8 Health System/West in the Superior Court of California, County of Kings. Plaintiff Gallegos
9 amended her complaint on April 17, 2020, alleging a single cause of action for violation of Labor
10 Code section 2698, *et seq.*, predicated on an underlying Labor Code section 226(a) violation.
11 Plaintiff Gallegos' first amended complaint alleges similar claims against related defendants as
12 those alleged in Plaintiff Sanchez's first amended complaint.

13 17. Plaintiff Gallegos propounded written discovery upon defendants, including
14 requests for production of documents, special and form interrogatories, and requests for
15 admissions, regarding defendants' payroll practices and procedures, data regarding the number
16 of aggrieved employees and wage statements at issue, and other information.

17 **MEDIATION**

18 18. Throughout the course of this litigation, the Parties have been working on
19 informal resolution of this matter. The Parties engaged in robust meet and confer efforts
20 regarding the underlying merits of the case and subsequently agreed to participate in mediation.

21 19. On July 1, 2019, the parties in the *Ridgeway* matter participated in an all-day
22 mediation with neutral Hon. Steven M. Barabedian (Ret.). The mediation concluded without a
23 settlement.

24 20. On March 9, 2020, the Parties attempted a second mediation with the Hon. Steven
25 M. Barabedian (Ret.). The second mediation included the participation of all Parties in this
26 Action.

27 21. In advance of the second mediation, and as a result of extensive discovery,
28 Defendants produced data relating to the number of aggrieved employees and wage statements at

1 issue. The data allowed me and my co-counsel to perform a comprehensive damage analysis in
2 preparation for the second mediation.

3 22. During the mediation, the Parties spoke at length about the strengths and
4 weaknesses of each side's claims and defenses, and the scope of Defendants' liability. Despite a
5 full day of negotiation, the Parties were unable to reach an agreement. Following further arm's
6 length negotiations facilitated by Hon. Barabedian (Ret.), the Parties accepted a proposal for
7 settlement and the key terms. A true and correct copy of the Parties' PAGA Representative
8 Action Settlement Agreement and Release ("Settlement Agreement" or "Settlement") is being
9 submitted concurrently with Plaintiffs' Motion.

10 **Combined Action**

11 23. On or about August 28, 2020, and in order to efficiently effectuate the current
12 settlement, Plaintiffs filed a Second Amended Representative Action Complaint in this Action,
13 incorporating all plaintiffs and defendants in the actions listed above into the Action. The Second
14 Amended Complaint alleges a single cause of action for violation of Labor Code section 2698, *et*
15 *seq.*, predicated on an underlying Labor Code section 226(a) violation. Specifically, Plaintiffs
16 allege that Defendants failed to provide accurate itemized wage statements that identified the
17 correct hourly rate of pay when overtime wages were paid and the correct total hours worked
18 when overtime and/or shift differential wages were paid. The Second Amended Complaint is the
19 operative complaint ("Complaint").

20 **SUMMARY OF THE PROPOSED SETTLEMENT**

21 24. As defined by the Settlement, the aggrieved employees are defined as "any
22 individual in the PAGA Group¹ during the PAGA Period²" ("PAGA Member"). (Settlement
23 Agreement § 1.17.) Based upon Defendants' records, there are an estimated 12,194 PAGA
24

25 ¹ The PAGA Group encompasses, generally, all non-exempt employees of the hospitals named in this Action who
26 were paid shift premium wages, overtime compensation, or double time compensation. The PAGA Group sub-
27 groups are defined in Settlement Agreement §§ 1.17.1 – 1.17.8.

28 ² The PAGA Period includes the liability period for the entire PAGA Group and largely begins with the date each
action was filed and ends with the date the Court enters approval of this settlement. The PAGA Period sub-periods
are defined in Settlement Agreement §§ 1.19.1 – 1.19.7.

Members who received approximately 145,007 Early Format Wage Statements that contained shift premium wages, overtime compensation, or double time compensation during the PAGA Period. (Settlement Agreement §§ 1.7, 1.18.)

25. The Settlement Agreement requires Defendants to pay the gross amount of Two Million Four Hundred Seventy-Three Thousand One Hundred Eighty-Seven Dollars (\$2,473,187.00) (the “Gross Settlement Amount”). (Settlement Agreement §§ 1.9, 4.1.) The balance of the Gross Settlement Amount remaining after deduction of the approved Enhancement Payments to Plaintiffs, Attorneys’ Fees and Costs, and the Settlement Administrator’s costs (the “Net Settlement Amount”), will be available for distribution to the LWDA and PAGA Members. (Settlement Agreement § 1.15.) Seventy-five percent of the Net Settlement Amount, or approximately \$1,134,847.99, will be paid to the LWDA for PAGA penalties. (Settlement Agreement § 4.5.) The remaining twenty-five percent, or approximately \$378,282.66, will be distributed to PAGA Members. (Settlement Agreement § 4.6.)

26. Each PAGA Member will receive an initial flat payment of \$5.00 from the Net Settlement Amount. (Settlement Agreement § 4.6.) The remainder will then be distributed to PAGA Members on a pro rata basis, based on the number of Early Format Wage Statements³ received during the applicable PAGA Period. (*Id.*)

27. Based on the number of PAGA Members, employees will be entitled to recover, on average, \$31.02 each. The amount any particular PAGA Member will be entitled to recover will be greater or lower than this average depending on the number of Early Format Wage Statements he or she received. This is fair, as it directly allocates greater penalties to individual PAGA Members who have allegedly suffered greater harm.

28. As part of the Settlement Agreement, Defendants do not object to Plaintiffs’ Counsel’s request for attorneys’ fees of approximately one-third of the Gross Settlement Amount, *i.e.* Eight Hundred Twenty-Four Thousand Three Hundred Ninety-Five Dollars and

³ Early Format Wage Statements are wage statements issued to the Aggrieved Employees from the beginning of the PAGA Period through May 8, 2019. Defendants resolved the wage statement defect that was the basis for the lawsuits resolved by the settlement on May 9, 2019.

1 Sixty-Seven Cents (\$824,395.67), plus up to Forty-One Thousand Six Hundred Sixty Dollars and
2 Sixty-Eight Cents (\$41,660.68) for reimbursement of documented litigation costs, subject to the
3 Court approving this Settlement. (Settlement Agreement § 4.2.) Also, as part of the Settlement
4 Agreement, Defendants do not object to Plaintiffs' request for an Enhancement Payment of Ten
5 Thousand Dollars (\$10,000.00) to each Plaintiff. (Settlement Agreement § 4.3.)

6 29. The Settlement Agreement also provides for the payment of the fees and expenses
7 reasonably incurred by the Settlement Administrator. (Settlement Agreement § 4.4.) The Parties
8 have agreed to utilize Phoenix Settlement Administrators to administer the settlement, with the
9 administration costs estimated to be \$24,000.00.

10 **POTENTIAL CIVIL PENALTIES**

11 30. Using the data provided by Defendants, I performed a comprehensive damages
12 analysis. Pursuant to Labor Code § 226.3, \$250 is the maximum PAGA penalty available per pay
13 period. Applying a civil penalty of \$250 for each of the 145,007 wage statements at issue,
14 Defendants' maximum exposure for penalties equals \$36,251,750.00 (\$250 x 145,007).

15 31. The maximum penalty calculation assumes that Plaintiffs will prevail on the
16 merits. However, Plaintiffs' claims are contested. Defendants have denied violation of any
17 applicable laws and liability for any claims asserted in the Action. Defendants maintained that
18 employees could simply add their regular hours worked to any overtime hours worked in order to
19 get the total hours worked in a given pay period. Given that all of the cases resolved by the
20 instant settlement hinge on this issue, if Defendant were able to persuade the Court that its wage
21 statements were legally compliant, there would be no finding of liability. Defendants have also
22 argued that even if the Court ultimately found the wage statements violative of Labor Code
23 section 226, the alleged violation is a technical one and the Court has discretion under PAGA to
24 reduce the maximum allowable PAGA penalties at its discretion.

25 32. Assuming that Plaintiffs prevailed on liability, under the facts of this case, I
26 appreciate the substantial risk that Defendants could present a persuasive argument to reduce the
27 amount of PAGA penalties at trial. Defendants could argue that even if the Court ultimately
28 found that the wage statements violate Labor Code section 226, the alleged violation is a

1 technical one as there is no allegation of actual unpaid wages. Moreover, Defendants could
2 request reduced PAGA penalties given their status as non-profit hospitals that serve relatively
3 isolated and rural populations. The Court has discretion under PAGA to reduce the maximum
4 allowable PAGA penalties or to decide not to award PAGA penalties at all. Defendants may
5 have sought summary judgment on this issue or proceeded to trial. Should Defendants have
6 prevailed, the State of California and Aggrieved Employees would have been left with zero
7 recovery.

8 33. I am also aware that Courts routinely award far less than the statutory maximum
9 amount of civil penalties, even where an underlying violation of the Labor Code is found. For
10 example, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, while the
11 plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA
12 penalty amount by 90%, citing the employer's good faith attempt at complying with the law. 30
13 Cal. App. 5th 504, 517 (2018). Similarly, in the matter of *Magadia v. Wal-Mart Assocs. et al.*,
14 2019 U.S. Dist. Lexis 91792, while the trial court imposed substantial PAGA penalties upon the
15 defendant, such amount still represented reductions of 67% and 80% of the potential PAGA
16 penalties at issue. *Id.* at *87-*100. Moreover, this was only after the plaintiff in *Magadia* had
17 prevailed after trial.

18 34. I strongly believe that Plaintiffs can prevail at trial. However, after taking into
19 account sharply disputed factual and legal issues involved in this litigation, the risks attending
20 further prosecution, including the still-developing law under PAGA, and the substantial benefits
21 to be received pursuant to the compromise and settlement of the litigation, I have concluded that
22 settlement on the terms set forth in the Settlement Agreement is appropriate and in the best
23 interests of Plaintiff and the aggrieved employees (or PAGA Members).

24 35. Moreover, as a result of this lawsuit and Plaintiffs' PAGA Notices, Defendants
25 revised their payroll system on May 9, 2019, such that the wage statement defect at issue in this
26 case no longer exists.

27 **ATTORNEY EXPERIENCE**

28 36. My firm has a great deal of experience in wage and hour class action litigation

1 and has been approved as class counsel in a number of class actions.

2 37. My qualifications are as follows: I received my JD from University of Southern
3 California Gould School of Law in 2009. Upon graduation, I practiced law as an associate at
4 Seyfarth Shaw LLP, representing corporate clients in both single-plaintiff and wage hour class
5 actions. In 2014, I began as an associate at Diversity Law Group.

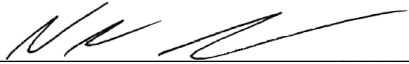
6 38. I have handled a number of wage and hour matters including class actions and
7 multiple-plaintiff actions. I have been named as Class Counsel in a number of class actions that
8 have been granted certification or preliminary or final approval by the Superior Courts of Los
9 Angeles County, Orange County, Alameda County, and Monterey County, the United States
10 District Court for the Central District of California, and the United States District Court for the
11 Northern District of California. These cases include, but are not limited to: *Diller v. Under*
12 *Armour Retail, Inc.*, Santa Clara County Superior Court Case No. 114-CV-265729, *Dall v. Post*
13 *Alarm Systems*, Los Angeles County Superior Court Case No. BC598528, *Lopez v. Imperial*
14 *Body Shop, Inc.*, Orange County Superior Court Case No. Case No. 30-2015-00816193-CU-OE-
15 CXC, and *Hughes v. Lincare, Inc., et al.*, Monterey Superior Court Case No. M124764. *Esqueda v.*
16 *Sonic Automotive Inc.*, Case No. 30-2016-00877924-CU-OE-CXC, *Diller v. Under Armour*
17 *Retail, Inc.*, Santa Clara County Superior Court Case No. 114-CV-265729, *Dall v. Post Alarm*
18 *Systems*, Los Angeles County Superior Court Case No. BC598528, and *Lopez v. Imperial Body*
19 *Shop, Inc.*, Orange County Superior Court Case No. Case No. 30-2015-00816193-CU-OE-CXC.
20 As of 2018, I increased my hourly rate to \$600.00 per hour. I have been approved at this rate by
21 various courts, including *Obiols v. Lockheed Martin Corporation*, Santa Clara County Superior
22 Court Case No. 17CV314178; *Sanchez v. American Para Professional Systems, Inc.*, Santa Clara
23 County Superior Court Case No. 17CV306751, and *Mankin v. Taste Catering*, San Mateo
24 Superior Court Case No. 17-CIV-03497; *Foaad Hanna v. Equinix, LLC*, Santa Clara County
25 Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles County
26 Superior Court Case No. BC720144; *Mary Della Maggiora v. Watsonville Community Hospital*,
27 Santa Cruz County Superior Court Case No. 18CV00191; *Pittman v. Martinez Steel*
28 *Corporation*, San Bernardino County Superior Court Case No. CIVDS1823132; and *Michael*

1 *Randolph v. Pacific Racing Association*, Alameda County Superior Court Case No.
2 RG18908139.

3 39. Concurrent with the filing of the Motion to Approve PAGA Settlement, my office
4 uploaded the Motion, Settlement Agreement, and proposed order to the LWDA's website.

5 I declare under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct.

7 Executed on this 5th day of October 2020, at Los Angeles, California.

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9 _____
10 Nicholas Rosenthal
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