

DOGRA LAW GROUP PC

SHALINI DOGRA, ESQ. (SBN: 309024)
4065 Glencoe Ave., Ste. 107
Marina Del Rey, CA 90292
Telephone: (747) 234-6673
Facsimile: (310) 868-0170
Shalini@dogralawgroup.com

PAYTON EMPLOYMENT LAW, PC

ROBERT V. TORRES, ESQ. (SBN: 142752)
CHANTAL MCCOY PAYTON, ESQ. (SBN: 293215)
3807 W. Sierra Highway, Suite 206
Acton, California 93510
Telephone: (661) 434-1144
Facsimile: (661) 434-1144
RTorres@PaytonEmploymentLaw.com
CPayton@PaytonEmploymentLaw.com

Attorneys for Plaintiff Joel Villalpando

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

JOEL VILLALPANDO, an individual,

Plaintiff,

v.

RED SPARROW SERVICES, INC., a
California Corporation; AVREK LAW FIRM,
a Professional Law Corporation; MARYAM
PARMAN, an individual; DOES 1-10,
business entities, forms unknown; DOES 11-
20, individuals; and DOES 21-30, inclusive,

Defendants.

Case No.: 30-2020-01140620-CU-OE-CXC

**PLAINTIFF JOEL VILLALPANDO'S
UNOPPOSED EX PARTE APPLICATION
FOR APPROVAL OF PAGA
SETTLEMENT AND MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: December 3, 2020
Time: 8:30 a.m.
The Hon. William Claster
Dept. CX104

[Complaint filed: May 26, 2020]

Plaintiff Joel Villalpando hereby submits the following Memorandum of Points &
Authorities in support of Plaintiff's Unopposed *ex parte* application for Approval of PAGA
Settlement.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Joel Villalpando (“Plaintiff”) filed a lawsuit against his employers, Defendants
4 Red Sparrow Services Inc., Avrek Law Firm and Maryam Parman (“Defendants”) alleging
5 California Labor Code violations. Following a private mediation, Plaintiff and Defendants
6 executed a settlement agreement resolving all claims, including claims under the Private
7 Attorneys General Act (“PAGA”), Labor Code section 2698 *et seq.* The parties now seek
8 approval of the settlement, as the Court must approve any settlement of a case that includes a
9 PAGA claim. (Labor Code § 2699(1)(2).)

10 Pursuant to this ex parte application, Plaintiff moves for the Court to approve the
11 unopposed settlement, according to the terms of the Stipulation and Proposed Order attached as
12 “**Exhibit 1**” to the Declaration of Chantal Payton (“Payton Decl.”) For the reasons set forth
13 below, this settlement is reasonable, and should be approved by the Court.

14 **II. BACKGROUND**

15 **A. The Case and the Claims**

16 In this employment action, Plaintiff alleged that Defendants failed to compensate him for
17 all hours worked, failed to provide meal and rest breaks, failed to timely pay wages upon
18 separation, and failed to pay overtime. (Payton Decl., ¶ 2) Plaintiff initiated the instant matter on
19 May 26, 2020. *Id.* The complaint alleges eleven causes of action, including: overtime violations,
20 failure to provide meal and rest periods, failure to pay minimum wages, failure to provide accurate
21 itemized wage statements, failure to timely pay all wages upon separation of employment, failure
22 to pay reimbursements, breach of contract, unfair competition, and a cause of action under PAGA.
23 *Id.*

24 This ex parte application has been filed because settlement of a PAGA cause of action
25 requires approval of this Court:

26 The Superior Court shall review and approve any settlement of any
27 civil action filed pursuant to this part. The proposed settlement shall
28 be submitted to the Agency (the Labor and Workforce

Development Agency or “LWDA”) at the same time that it is submitted to the court.

(Labor Code § 2699.3 subd. (b)(4).) As required in the statute, Plaintiff submitted the proposed Settlement Agreement to the LWDA, and the papers filed in support of this ex parte application, on the same day this ex parte application was filed with the Court. (Payton Decl. ¶ 5.)

B. The PAGA Settlement Terms

On or about September 22, 2020, the Parties conducted a full day mediation and reached a confidential settlement. (Payton Decl. ¶ 3.) The Settlement Agreement was Finalized and Executed on or about December 1, 2020. (*Id.*) See Joint Stipulation Re PAGA Settlement, attached as “**Exhibit 1**” to Payton Decl. (herein the “PAGA Settlement” or “PAGA Agreement.”)

The PAGA Agreement provides that thirty-five thousand dollars (\$35,000.00) will be allocated to potential PAGA penalties. (Payton Decl. ¶ 4.) The agreement provides that the \$35,000.00 settlement amount will be distributed as follows:

1. Counsel for Plaintiff and the State of California (Payton Employment Law) shall be paid and receive an amount not to exceed Eleven Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$11,666.66) as reasonable attorneys’ fees under PAGA;
2. Counsel for Plaintiff and the State of California shall be paid and receive as reasonable reimbursable costs under PAGA an amount not to exceed Six Thousand Nine Hundred Eighty Dollars and Zero Cents (\$6,980.00) to be distributed to Payton Employment Law.
3. The actual costs of administration, up to a maximum payment of \$1,500, shall be paid to the Settlement Administrator;
4. Plaintiff Joel Villalpando shall receive not more than One Thousand Dollars and Zero Cents (\$1,000.00) as a PAGA service award (any amount not awarded to Plaintiff shall be included in the net proceeds, i.e., Net PAGA Settlement Amount); and
5. The remainder of the Maximum Settlement Amount, once the amounts above have been deducted (the “Net PAGA Settlement Amount”), approximately Thirteen Thousand Eight Hundred and Fifty-Three Dollars and Thirty-Four Cents (\$13,853.34) will be

distributed as required by Labor Code section 2699(i), and in accordance with the terms of this Settlement Agreement, subject to the Court's approval, as follows:

- a. Seventy-five percent (75%), approximately Ten Thousand Three Hundred Ninety Dollars and One Cents (\$10,390.01), shall be paid to and received by the LWDA, to settle the claims for PAGA penalties based on the alleged violations of the Labor Code as asserted in the Action; and
- b. Twenty-five percent (25%), approximately Three Thousand Four Hundred Sixty-Three Dollars and Thirty-Four Cents (\$3,463.34), shall be paid to and received by the Aggrieved Employees on a pro rata basis according to each Aggrieved Employee's individual number of Pay Period. (Payton Decl. ¶ 4(e)(ii)), Exhibit 1)

III. ARGUMENT

A. The PAGA Settlement is Reasonable, and Should Be Approved by The Court

Despite the fact that PAGA has been in effect for more than 10 years, there is a dearth of case law setting forth specific criteria for parties and trial courts to use to evaluate the sufficiency PAGA settlement. To the extent PAGA settlements are discussed at all by appellate courts, the discussion has largely been in the context of PAGA claims brought in conjunction with other non-PAGA class action allegations. (See *e.g.*, *Villacres v. ABM Industries, Inc.* (2010) 189 Cal.App.4th 562 (finding a release of "all claims" in class action settlement encompassed claims under PAGA).) One decision that specifically addresses a trial court's authority to approve a PAGA settlement is an appellate decision in the *Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576, 589, in which the Court of Appeal held that trial court did not abuse its discretion when it approved a class action settlement that did not allocate any money to a highly disputed PAGA claim.

Appellate Courts have suggested that the overall intent of PAGA is to provide a mechanism for private enforcement of the labor laws that is not necessarily tied to the recovery of a specific threshold amount of penalties. (See *Brown v. Ralph's Grocery Co.* (2011) 197 Cal.App.4th 489,

501, (“The purpose of the PAGA is not to recover damages or restitution”).) These principles strongly favor approval of the proposed settlement.

In deciding whether to grant approval of the proposed Settlement, the primary issue to be decided is whether the Settlement is fair, adequate and reasonable. As set forth herein, the proposed Settlement embodies all of the features of a settlement that is fair, reasonable, and adequate, as it is the product of (1) arms-length negotiations, (2) negotiated by attorneys experienced in wage and hour issues, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative strength and value of the PAGA claim, and (4) it reflects a reasoned compromise based directly on the relative strength and value of the PAGA claim, as well as the risks, expense, complexity and likely duration of further litigation. (Payton Decl. ¶ 14.)

Based on the information received from Defendants, as well as through discussions with Defendants’ Counsel, Plaintiff’s Counsel was able to (i) determine the total number of distinct individuals falling within the definition of “Aggrieved Employee” for the relevant statutory period, and (ii) construct a damage model that calculated the maximum realistic amount of PAGA penalties that could be levied against Defendants within the PAGA Period. (Payton Decl. ¶ 6.) Defendants, however, disputed Plaintiff’s claims and disputed both the existence of, and extent of liability as alleged by Plaintiff. (*Id.*) Based on Plaintiff’s Counsel’s experience in litigating similar “representative” wage and hour claims, the degree of investigation that was conducted, and the amount of data that was obtained, was sufficient to determine the potential value of the PAGA claim, and to evaluate the strength of this claim for purposes of settlement. (*Id.*)

The proposed settlement was reached after an extensive full-day mediation and negotiation discussions between experienced counsels. (Payton Decl., ¶ 7.) Counsel for all parties participated in a number of telephone conferences, email exchanges and overall litigation related to the entirety of Plaintiff’s claims, including informal discovery and exchange of documentation, including paystubs for aggrieved employees for analysis by Plaintiff’s counsel. (*Id.*) The parties remained steadfast in their positions as to the merits of Plaintiff’s specific PAGA claims. However, both parties were persuaded that the ultimate uncertainty and cost attendant with

1 proceeding to trial weighed in favor of agreeing to a deal that would resolve the entirety of
2 Plaintiff's claims. (*Id.*)

3 The value achieved by the Settlement may be gleaned from the fact that the LWDA and
4 the approximately 71 Aggrieved Employees encompassed by the Settlement during the "PAGA
5 period" (i.e., April 7, 2019 through the date the settlement is approved by the court) will receive
6 no less than \$13,853.35 under the terms of the Settlement, which, pursuant to the operative statute,
7 shall be allocated "75 percent to the Labor and Workforce Development Agency . . . and 25
8 percent to the aggrieved employees." *See Cal. Lab. Code* § 2699(i); (Payton Decl. ¶ 8). This is
9 a reasonable recovery, not only because further litigation may have resulted in a net-zero recovery
10 based on the defenses asserted by Defendants, but because the amount secured by Plaintiff is
11 sizable and in line with similar settlements of these types of claims under PAGA. (*Id.*) It is also
12 important to underscore that all penalty amounts paid to Aggrieved Employees will be an
13 unexpected windfall, as employees typically do not bring individual lawsuits asserting only
14 PAGA penalties. (*Id.*)

15 Plaintiff's counsel estimated that Defendant's maximum theoretical exposure in this
16 action totals between April 7, 2019 through September 22, 2020 (the date the mediation) was
17 approximately \$5,026,171.33 (only \$293,057.91 of which pertained to intake specialists) with
18 stacking computed by multiplying the total aggregate wage statements by the civil penalty for
19 each pay period associated with every Labor Code violation. (Payton Decl. ¶ 9.) Without
20 stacking, the maximum exposure to Defendant would be approximately \$283,548.26. (*Id.*) These
21 numbers, however, assume that a violation occurred each and every pay period, which Defendant
22 has strongly disputed. (*Id.*) Defendants contend they acted within the requirements of California
23 law at all times as to all Aggrieved Employees. (*Id.*) Moreover, they maintained that even if the
24 Court did award penalties, the Court could and would *substantially* reduce the penalties awarded
25 based on the discretionary factors contained in Labor Code § 2699(e)(2) ("In action by an
26 aggrieved employee . . . , a court may award a lesser amount than the maximum civil penalty
27 amount specified by this part if, based on the facts and circumstances of the particular case, to do
28 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.") .

(*Id.*) The parties believe that an award of the maximum penalties would be unjust, arbitrary and oppressive, or confiscatory within the meaning of Labor Code section 2699 (e)(2) for the following reasons:

1. Defendant Avrek and Defendant Red Sparrow are two separate corporate entities. Consequently, the number of Aggrieved Employees, as well as the relevant covered PAGA group for the instant matter, is small.
2. Even within the subgroup of employees that held the “intake specialist” title as Plaintiff did, there existed an even smaller subset that worked the same hours as Plaintiff. Hence, Plaintiff’s work conditions were not common to most intake specialists. On the contrary, Plaintiff’s employment experience for Defendants was extremely unique to him and represented the circumstances of a small group of Defendants’ employees.
3. Additionally, in his role as an Intake Specialist, Plaintiff had access to confidential information that many other non-exempt employees lacked. Given the specific duties and responsibilities that Plaintiff held, the claims he alleged against Defendants represent an individual experience that is particular to him and Plaintiff’s core causes of action are appropriately alleged on an individual basis.
4. This was not a wage and hour case where PAGA penalties represented a significant portion of the amount of damage in dispute. In total, there were only 9 aggrieved employees of Defendants who either held the same job as Plaintiff or who Plaintiff contends were subjected to similar violations during the covered period. This is not a wage and hour case where PAGA penalties represented a significant portion of the amount of damage in dispute. (Payton Decl., ¶ 9(d)). Indeed, no more than nine individuals from Defendants’ workforce, which includes at least 100 individuals, held the same title as Plaintiff or had work hours similar to his. (*Id.*) Rather, Plaintiff’s claims are individual-basis labor claims that give rise to unpaid minimum, overtime, and double-time wages, unpaid commissions and bonuses, liquidated damages, meal and rest break premiums, wage statement penalties, waiting-time penalties, unreimbursed expenses, and statutory attorneys’ fees.

1 5. Defendants presented evidence against the PAGA action, including informal discovery
2 responses before mediation that swore only nine employees were subject to the Labor
3 Code violations alleged in Plaintiff's Complaint: and

4 6. In light of the insignificant number of Aggrieved employees, especially in comparison to
5 Plaintiff's overwhelming estimated damages from the violations he was personally
6 subjected to, it is likely the Court would exercise discretion to reduce PAGA penalties
7 awarded. (Payton Decl., ¶ 9(f).) In light of these circumstances, a significant recovery
8 under PAGA was unlikely. (*Id.*)

9 The relative strength of the PAGA claim brought by Plaintiff weighs in favor of the Court
10 finding that the settlement is fair, adequate, and reasonable, as Defendant maintained numerous
11 defenses to the theories of penalty-liability put forward by Plaintiff that, if successful, had the
12 potential to completely eliminate any recovery. (Payton Decl., ¶ 10.)

13 In light of the above, the parties believe that a settlement amount of \$35,000.00 in PAGA
14 penalties is a fair compromise that furnishes the state with a payment while avoiding the cost
15 and burden to the parties and the Court of litigating this case through trial.

16 **B. The Individual Settlement Between Plaintiff and Defendants is Also Reasonable,**
17 **and Should Be Approved by The Court**

18 The parties negotiated and resolved all of Plaintiff's individual non-representative claims
19 in exchange for a mutual generally release with a Civil Code section 1542 waiver. (Payton Decl.
20 ¶ 12.) The terms of this settlement agreement including the settlement amount is confidential,
21 thus, the agreement will be lodged with the court under seal at the time of filing this Ex Parte
22 Application. (*Id.*) The consideration paid to Plaintiff pursuant to this settlement agreement was
23 only for his individual claims; no additional consideration was paid to Plaintiff for resolving the
24 representative PAGA claims and the PAGA claims were separately negotiated among counsel
25 during the mediation. (*Id.*)

26 It is Plaintiff's counsel view that settlement payment for Plaintiff's individual wages was
27 fair and reasonable under the circumstances and constituted a significant discount from the true
28 damages that he suffered. (Payton Decl. ¶ 13.) Plaintiff's core claims in this action alleged

1 misclassification and individual labor claims. (*Id.*) As a person who held the position of “Intake
2 Specialist” for Defendants, Plaintiff filled a unique role and had an employment experience that
3 was markedly different and distinct from other aggrieved employees. (*Id.*) As further detailed
4 above, in his capacity as an Intake Specialist, Plaintiff held an experience that was extremely
5 different from other non-exempt employees that worked for Defendants. (*Id.*) Unlike most of
6 Defendants’ hourly non-exempt employees, Plaintiff had to be on call seven days per week, and
7 regularly complete work obligations, included client intake calls, outside of office hours. (*Id.*)
8 Accordingly, the individual damages that Plaintiff contends he suffered would be significantly
9 higher than other non-exempt employees, and even other Intake Specialists. Plaintiff’s counsel
10 estimated Plaintiff’s damages to be in the high six-figures (approximately \$823,038.63). (*Id.*)

11 **IV. CONCLUSION**

12 The settlement between Plaintiff and Defendants is fair and reasonable. Therefore,
13 Plaintiff, moving without opposition in this case, respectfully requests the Court grant final
14 approval of the Settlement negotiated by the parties pursuant to Labor Code § 2699, *et seq.*

15 DATED: December 2, 2020

16
17
18 By:



19 Chantal McCoy Payton, Esq.
20 Robert Torres, Esq.
21 PAYTON EMPLOYMENT LAW

22 Shalini Dogra, Esq.
23 DOGRA LAW GROUP PC

24 Attorneys for Plaintiff
25 JOEL VILLALPANDO
26
27
28