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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

CRYSTAL "CHRISTIANA" AMELY, an
individual, on behalf of the State of
California, as a private attorney general, and
on behalf of all others similarly situated,

Plaintiff,

v.

OZUMO OCEAN AVE LLC, a California
Limited Liability Company; 41 OCEAN
CLUB, a California Limited Liability
Company; OZUMO RESTAURANT
VENTURES, LLC, a California Limited
Liability Company; JEREMY UMLAND, an
individual; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: **20STCV44342**

**[Assigned to Judge Amy D. Hogue, Dept.
7]**

**STIPULATED REQUEST FOR
DISMISSAL; DECLARATION OF
MARTIN SULLIVAN**

Action Filed: November 17, 2020
Trial Date: None Set

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1 **B. The Merits of the Case In Light of Factual and Legal Defenses.**

2 *Merits of Case*

3 Plaintiff contends that Defendants required her and others to clock out around 2 a.m.
4 most evenings, even though she and others often had to remain and continue to perform work
5 related to their duties as servers and related food and drink service positions. (Amely Decl., ¶ 2.)
6 Plaintiff also contends that Defendants knowingly allowed Plaintiff and other employees to
7 work through meal breaks and have their meal breaks interrupted. (Amely Decl., ¶ 3.) Plaintiff
8 contends this off the clock work resulted in minimum wage violations because Defendant did
9 not pay Plaintiff or other employees anything for this off-the clock work. (Amely Decl., ¶ 3.)
10 Likewise, when Plaintiff and other employees worked off the clock on the same day she or they
11 worked on the clock eight or more hours during a single workday or 40 or more hours during a
12 workweek, she contends this necessarily resulted in unpaid overtime wages. (Amely Decl., ¶ 4.)
13 Plaintiff contends that due to the same press of business and understaffing by Defendant,
14 Plaintiff rarely received timely, duty-free rest breaks. (Amely Decl., ¶ 5.) The wage statement,
15 waiting time, UCL and PAGA claims are all derivative of the meal, rest, minimum wage, and
16 overtime claims.

17 *Defendant Entity That Directly Employed Plaintiff Is Not Operational; The Other*
18 *Defendants Are Tangential to the Litigation*

19 Through litigation, Defendants disclosed compelling evidence that the litigation would not bear
20 fruit on behalf of the class. Plaintiff and her colleagues worked for 41 Ocean Club, LLC, which
21 is the entity printed on her check stubs. (Sullivan Decl., ¶ 3.) According to the California
22 Secretary of State website and confirmed by counsel for Defendants, 41 Ocean Club was
23 merged with Ozumo Ocean Avenue, LLC. (Sullivan Decl., ¶ 3.) Ozumo Ocean Avenue, LLC
24 suffered extreme business loss due to COVID and shut down all operations. (Sullivan Decl., ¶
25 3.) To make matters worse, it's owner and last remaining employee, James Lin, died of COVID
26 in August 2021. (Sullivan Decl., ¶ 3.)
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Ozumo Restaurant Ventures, LLC has no employees, is related in name-only to Ozumo Ocean Avenue, LLC and did not employ Plaintiff. (Sullivan Decl., ¶ 4.) Individual Defendant Jeremy Umland was an investor in Ozumo Restaurant Ventures, LLC, but was not involved in the day-to-day operations of any of the entity Defendants. (Sullivan Decl., ¶ 4.) Thus, the prospect for a meaningful recovery on behalf of the class was virtually non-existent, irrespective of the strength of the claims, which have their own vulnerabilities. (Sullivan Decl., ¶ 4.)

Defendants Had An Arbitration Agreement With A Class Waiver

Plaintiff executed an arbitration agreement arising from her employment with 41 Ocean Club, LLC, which included a class waiver. (Sullivan Decl., ¶ 5.) This class waiver both presented an obstacle in maintaining and class claim in Court, but also presented the possibility that many class members would be precluded from participating in the class action. (Sullivan Decl., ¶ 5.)

Defendants' Policies Appear Compliant; Defendants' Alleged Practices Not Easily Certifiable

Defendants had a meal break waiver that Plaintiff signed. (Sullivan Decl., ¶ 6.) This waiver also described in compliant language the right for Plaintiff and others to take first 30 minute-duty free meal breaks and the time requirements for those breaks. (Sullivan Decl., ¶ 6.) Plaintiff also signed an acknowledgement of receipt for a handbook outlining her the conditions of her work. (Sullivan Decl., ¶ 6.) Defendants contended these policies were similarly implemented across the putative class. (Sullivan Decl., ¶ 6.)

Plaintiff's time records and corresponding wage statements show that there was no illegal rounding of work time or departures from the hours recorded and the hours paid. (Sullivan Decl., ¶ 7.) Therefore, there is no clear documentary evidence of minimum wage or overtime violations which can be proven on documents alone, presenting individualized issues of proof for purposes of litigating the class issues and manageability for the PAGA claim. (Sullivan Decl., ¶ 7.) Plaintiff does not allege she was instructed to work through her rest breaks, only that Defendants knew she frequently was too busy to take them, which presents

1 individualized issues of proof for purposes of litigating the class issues and manageability for
2 the PAGA claim. (Sullivan Decl., ¶ 7.) Because the waiting time, wage statement, UCL and
3 PAGA claims are all rooted in alleged meal and rest period violations, which themselves are
4 difficult to certify, the same significant challenges are present to certifying these derivative
5 claims or prosecute them under PAGA. (Sullivan Decl., ¶ 7.)

6 *Limited Number Of Putative Class Members Eligible to Participated and Status of The*
7 *Direct Employer*

8 There are approximately 102 class members. (Sullivan Decl., ¶ 8.) However, the
9 existence of an arbitration agreement with class waiver as well as non-operational status of the
10 direct employer Defendant entity reduces the prospect for a meaningful class recovery to almost
11 nothing. (Sullivan Decl., ¶ 8.)

12 *Plaintiff May Not Be Typical*

13 Plaintiff was a server. (Sullivan Decl., ¶ 9.) Other putative class members included (1)
14 bussers; (2) cooks; (3) security; (4) bar tenders and bar backs; (5) hosts; and (6) non-exempt
15 management. (Sullivan Decl., ¶ 9.) Defendants contend that each type of employee was subject
16 to different schedules, managers and messaging from those managers, and methods of pay
17 (some tipped and some not tipped), which renders Plaintiff atypical to represent other non-
18 servers. (Sullivan Decl., ¶ 9.) Thus, typicality is therefore at issue. (Sullivan Decl., ¶ 9.)

19 *Individual Issues Likely Predominate and PAGA Is Likely Unmanageable*

20 Given the various types of hourly employees, apparently compliant-policies and time-
21 keeping and pay practices, each claim is subject to testimonial differences by employees who
22 worked different shifts, reported to different managers, and possibly had different reasons for
23 not receiving a compliant meal and/or rest break. (Sullivan Decl., ¶ 10.) This presents
24 challenges to certification due to the predominance of individual issues, which similarly
25 presents serious manageability issues for proving PAGA violations. (Sullivan Decl., ¶ 10.)
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No Notice To Putative Class Members; No Prejudice To Them

The putative class members have not been notified of the instant lawsuit. (Sullivan Decl., ¶ 11.) The resolution of this matter—which includes dismissal without prejudice of the class and PAGA claims—does not prejudice the putative class members, whose claims and rights to pursue damages and penalties remain fully intact. (Sullivan Decl., ¶ 11.)

C. The Parties' Resolution of Plaintiff's Individual Claims and Dismissal Without Prejudice of Class and PAGA Claims.

Plaintiff's Individual Claims

Plaintiff resolved her individual claims for damages, penalties, fees and costs against Defendant for \$45,000. (Sullivan Decl., ¶ 13.) A true and correct copy of the settlement agreement is attached to the Sullivan Declaration as **Exhibit A**. *Id.* A copy of this stipulation, the settlement agreement, and proposed order has been submitted to the LWDA. (Sullivan Decl., ¶ 13.) A true and correct copy of the submission receipt is attached to the Sullivan Declaration as **Exhibit B**. *Id.*

Plaintiff worked for Defendant from August 19, 2015, to April 10, 2019. (Amely Decl., ¶ 6.) During this time, her time records reflect just seven missed meal periods. (Amely Decl., ¶ 6.) However, she alleges she worked longer hours than what were recorded and thus missed approximately 40 meal breaks during her employment. (Amely Decl., ¶ 6.) Plaintiff's regular rate of pay was \$14.25, so she would be owed \$570 for her missed meal premiums. (Amely Decl., ¶ 6.) Plaintiff estimates she missed 157 rest periods, in part because her scheduled shift length almost always triggered a rest break obligation although it infrequently triggered a meal break obligation, Plaintiff would be entitled to \$2,237.25 in rest period premiums. (Amely Decl., ¶ 6.) Plaintiff estimates that she worked off the clock approximately 1 hour of overtime each work, or about 157 hours, she would be owed \$3,355.88 in unpaid overtime, \$2,041 in minimum wage violations, and \$3,420 in waiting time penalties. (Amely Decl., ¶ 6.) Plaintiff's wage statement claim is of no measurable value because the wage statements accurately reflected the wages actually paid based on the time actually recorded. (Amely Decl., ¶ 6)

1 Plaintiff does not recover any PAGA penalties under the settlement agreement. (Amely Decl., ¶
2 7.) Plaintiff did, however, sign an individual release of all claims known and unknown,
3 including Fair Employment and Housing claims, which was integral to the settlement agreement
4 as required by Defendants. (Amely Decl., ¶ 8.)

5 The total value for Plaintiff's individual claims for damages, penalties, fees and costs,
6 therefore exceed \$11,624.13 not including the value of those claims released through Plaintiff's
7 general release. (Sullivan Decl., ¶ 14.)

8 *Plaintiff's Litigation Costs and Attorney Fees*

9 Plaintiff's counsel expended \$3,719.00 in litigation expenses. (Sullivan Decl., ¶ 15.)
10 Plaintiff's counsel also expended approximately 59 hours litigating this case, resulting in
11 \$37,170 in fees. (Sullivan Decl., ¶¶ 15, 16.) Thus, Plaintiff's counsel expended more than
12 \$40,889 in fees and costs and, under the contingency arrangement in place, takes a significant
13 financial loss in resolving this case on an individual basis. (Sullivan Decl., ¶ 15.) Thus, total
14 exposure of Plaintiff's underlying damages as well as Plaintiff's attorneys fees and costs
15 exceeds \$52,500, or more than \$7,500 that what was paid as a settlement. (Sullivan Decl., ¶ 15.)

16 *Dismissal Without Prejudice of The Class and PAGA Claims*

17 No prejudice will result to any putative class members or allegedly aggrieved employees
18 as a result of Plaintiff's dismissal without prejudice of the Class and PAGA claims, as set forth
19 in the concurrently filed Declaration of Martin Sullivan and incorporated herein. *See* Sullivan
20 Decl. (providing information required by Cal. R. Ct., Rule 3.770 ("[T]he action may be
21 dismissed without notice to the class members if the court finds that the dismissal will not
22 prejudice them."); *see Williams v. Superior Court*, 3 Cal.5th 531 (2017). ("PAGA does not
23 make other potentially aggrieved employees parties or clients of plaintiff's counsel, does not
24 impose on a plaintiff or counsel any express fiduciary obligations, and does not subject a
25 plaintiff or counsel to scrutiny with respect to the ability to represent a large class.").

26 In particular, the requested dismissal without prejudice of the class claims and PAGA
27 claims will not affect the ability or entitlement of any other putative class member or alleged
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1 aggrieved employees to seek any relief or remedies. Rather, the Parties seek to dismiss
2 Plaintiff's individual claims with prejudice, including her first through seventh causes of action.
3 Plaintiff has notified the LWDA of the settlement terms and provided copies of these dismissal
4 papers. (Sullivan Decl., ¶ 12.)

5 Further, the Parties' individual settlement agreement is not to the detriment of the
6 putative class members or alleged aggrieved employees. For example, the Parties have
7 conducted only limited formal discovery; this proposed class in this action has not been
8 certified; and no notice of the pendency of this action has been made, neither orally nor in
9 writing. Moreover, no notice has been required to be provided to the putative class members;
10 there is no pending request for preliminary or final approval of the instant claims; and the terms
11 of the individual settlement agreement are reasonable. Finally, the prospects for a meaningful
12 recovery on behalf of the class is almost non-existent due to the practical obstacles of recovery
13 against a non-operation Defendant, the exigent financial circumstances of the Defendants, and
14 the various weaknesses in the claims and strengths of certain of Defendants' defenses.

15 THEREFORE, the Parties hereby stipulate, and subject to the approval of this Court,
16 that:

17 1. Plaintiff's class allegations shall be dismissed without prejudice. The dismissal
18 of these class allegations is without prejudice as to the rights of any of the putative class
19 members whom Plaintiff has been attempting to represent to date. In accordance with California
20 Rule of Court, Rule 3.770, the dismissal of the uncertified class claims may be approved
21 without notice being given to members of the proposed class because the dismissal would not
22 prejudice any putative class members.

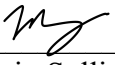
23 2. Plaintiff's PAGA allegations as to any other alleged aggrieved employee is
24 dismissed without prejudice. The dismissal without prejudice of this representative action is
25 without prejudice as to the rights of any of the allegedly aggrieved employees, and Plaintiff
26 confirms she is not an aggrieved member pursuant to the PAGA and will not pursue her PAGA
27 claim.

1 3. Plaintiff's individual claims shall be dismissed with prejudice.

2 4. The Parties shall bear their own costs, attorneys' fees, expenses, and
3 disbursements incurred in this action.

4 Dated: March 3, 2022

MELMED LAW GROUP P.C.

6 By: 
7 Martin Sullivan, Esq.
8 *Attorneys for Plaintiff*

9 Dated: March 3, 2022

BRAUNSTEIN & BRAUNSTEIN, PC

11 By: /s/ Clark A. Braunstein
12 Clark Anthony Braunstein, Esq.
13 *Attorneys for Defendants*

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1 of any of the entity Defendants. Thus, the prospect for a meaningful recovery on behalf of the
2 class was virtually non-existent, irrespective of the strength of the claims, which have their own
3 vulnerabilities.

4 **5. Defendants Had An Arbitration Agreement With A Class Waiver.** I reviewed
5 an arbitration agreement that Plaintiff executed directing all claims arising from her
6 employment with 41 Ocean Club, LLC, to be arbitrated, along with a class waiver. This class
7 waiver both presented an obstacle in maintaining Plaintiff's class claims in Court, but also
8 presented the possibility that many class members would be precluded from participating in any
9 class action even should it remain in Court.

10 **6. Defendants' Policies Appear Compliant; Defendants' Alleged Practices Not**
11 **Easily Certifiable.** My review of Plaintiff's personnel file revealed that Defendants had
12 implemented a meal break waiver that Plaintiff signed. This waiver also described in compliant
13 language the right for Plaintiff and others to take first 30 minute-duty free meal breaks and the
14 time requirements for those breaks. Plaintiff also signed an acknowledgement of receipt for a
15 handbook outlining her the conditions of her work. Defense counsel Clark Braunstein
16 represented to me these policies were similarly implemented across the putative class.

17 **7.** My review of Plaintiff's time records and corresponding wage statements
18 revealed that there was no illegal rounding of work time or departures from the hours recorded
19 and the hours paid. Therefore, I found no clear documentary evidence of minimum wage or
20 overtime violations which could prove such violations on the documents alone. This presents a
21 challenge that individualized issues of proof may predominate for purposes of litigating the
22 class issues and the PAGA claim may be unmanageable. As part of Plaintiff's pleadings, she did
23 not allege she was instructed to work through her rest breaks, only that Defendants knew she
24 frequently was too busy to take them, which also presents individualized issues of proof for
25 purposes of litigating the class issues and manageability for the PAGA claim. Because the
26 waiting time, wage statement, UCL and PAGA claims are all rooted in alleged meal and rest
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1 period violations, which themselves are difficult to certify, I believe the same significant
2 challenges are present to certifying these derivative claims or prosecute them under PAGA.

3 **8. Number Of Putative Class Members Eligible to Participate and Status of**
4 **The Direct Employer.** According to records informally produced by Defendants, there are
5 approximately 102 class members. However, the existence of an arbitration agreement with
6 class waiver may preclude many or most of those from taking part in a class action. In addition,
7 the non-operational status of the direct employer Defendant entity, reduces the prospect for a
8 meaningful class recovery to almost nothing.

9 **9. Plaintiff May Not Be Typical.** Plaintiff was a server, according to her personnel
10 file and my investigation. According to informal discovery responses, other putative class
11 members included (1) bussers; (2) cooks; (3) security; (4) bar tenders and bar backs; (5) hosts;
12 and (6) non-exempt management. Defense counsel Clark Braunstein contended that each type of
13 employee was subject to different schedules, managers and messaging from those managers,
14 and methods of pay (some tipped and some not tipped), which renders Plaintiff atypical to
15 represent other non-servers. Thus, typicality is therefore at issue.

16 **10. Individual Issues Likely Predominate and PAGA Is Likely Unmanageable.**
17 Given the various types of hourly employees, apparently compliant-policies, and at least facially
18 compliant time-keeping and pay practices, each claim is subject to testimonial differences by
19 employees who worked different shifts, reported to different managers, and possibly had
20 different reasons for not receiving a compliant meal and/or rest break. This presents challenges
21 to certification due to the predominance of individual issues, which similarly presents serious
22 manageability issues for proving PAGA violations.

23 **11. No Notice To Putative Class Members; No Prejudice To Them In**
24 **Compliance with Cal. R. Ct. 3.770(a).** I am aware that the putative class members have not
25 been notified of the instant lawsuit. The resolution of this matter—which includes dismissal
26 without prejudice of the class and PAGA claims—does not prejudice the putative class
27 members, whose claims and rights to pursue damages and penalties remain fully intact.

1 12. **Class Representative.** There is no benefit in finding a new class representative
2 in this matter as the reasons why the class action is likely to fail certification is most firmly tied
3 to individualized issues, the existence of an arbitration agreement, and the lack of resources of
4 the employing entity.

5 **The Parties' Resolution of Plaintiff's Individual Claims and Dismissal Without Prejudice**
6 **of Class and PAGA Claims**

7 13. **Fiduciary Duty; Plaintiff's Individual Claims; and Notice To The LWDA.**
8 Plaintiff resolved her claims for damages, interest, fees, and costs, as well as a general release of
9 all claims known and unknown, including unpled Fair Employment and Housing claims, against
10 Defendant for \$45,000. A true and correct copy of the settlement agreement is attached hereto as
11 **Exhibit A.** Here, I believe the overall settlement is reasonable. A copy of this stipulation, the
12 settlement agreement, and proposed order has been submitted to the LWDA. A true and correct
13 copy showing submission of the same is attached hereto as **Exhibit B.**

14 14. Based on Plaintiff's claims as set forth in her declaration, the total value for her
15 individual claims for damages, penalties, fees and costs, therefore exceeds \$11,624.13, not
16 including the value of those claims released through Plaintiff's general release.

17 15. **Plaintiff's Litigation Costs and Attorney Fees.** My office expended \$3,719.00
18 in litigation expenses. I also expended approximately 59 hours litigating this case at \$630 per
19 hour, resulting in \$37,170 in fees. Thus, my office expended more than \$40,889 in fees and
20 costs and, under the contingency arrangement in place, takes a significant financial loss in
21 resolving this case on an individual basis. Thus, total exposure of Plaintiff's underlying damages
22 as well as Plaintiff's attorneys fees and costs exceeds \$52,500, or more than \$7,500 that what
23 was paid as a settlement.

24 16. **Hourly Rate.** My hourly rate is \$630. Recent California courts have approved
25 lodestar amounts based in part on rates I have submitted to them in this range. See, e.g., *Rico v.*
26 *Western Mesquite Mines, Inc.*, Imperial County Superior Court Case No. ECU000873 (final
27 approval granted in October 2021, Mr. Sullivan submitted a \$650 hourly rate to Court);
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1 *Bollinger-Felt v. Pacific Bells, LLC*, Stanislaus County Superior Court Case No. CV-20-000680
2 (final approval granted in January 2022, Mr. Sullivan submitted a \$600 hourly rate to Court).
3 Since October 2018, I have served as lead Class and/or PAGA counsel on numerous cases,
4 including the following resolved matters:

- 5 • *Tami Pearl v. F&B Innovations, LLC*, San Bernardino Superior Court Case No.
6 CIVDS1912944 (PAGA Approval granted August 15, 2019) (Judge David Cohn);
- 7 • *Ramirez v. William J. Wickwire M.D., Inc. et al.*, San Bernardino Superior Court Case
8 No. CIVDS1913102 (final approval granted on November 25, 2019) (Judge David
9 Cohn);
- 10 • *Leavitt v. J's Maintenance Service, Inc. et al.*, San Bernardino Superior Court Case No.
11 CIVDS1917363 (final approval granted on December 23, 2019) (Judge David Cohn);
- 12 • *Walters v. Mondelez Global, LLC*, Santa Clara Superior Court Case No. 19CV354170
13 (final approval granted September 30, 2020) (Judge Patricia Lucas);
- 14 • *Ayala v. Scott Kirschenmann Farms, Inc.*, Kern County Superior Court Case No. BCV-
15 20-100338 (PAGA approval granted March 3, 2021) (Judge David R. Lampe);
- 16 • *Thompson v. Draeger's Super Markets*, San Mateo County Superior Court Case No. 20-
17 CIV-03222 (final approval granted May 3, 2021) (Judge. Marie S. Weiner);
- 18 • *Cornejo v. Weidner Property Management*, San Bernardino Superior Court Case No.
19 CIVDS2016465 (final approval granted on May 25, 2021) (Judge David Cohn);
- 20 • *Chimal v. AP Precision Metals, Inc.*, San Diego County Superior Court Case No. 37-
21 2019-00045108-CU-OE-CTL (PAGA approval granted June 11, 2021) (Judge Richard
22 E. L. Strauss);
- 23 • *Matysiak v. Ted Baker Limited*, Los Angeles County Superior Court Case No.
24 21STCV01545 (PAGA approval granted July 16, 2021) (Judge Richard L. Fruin);
- 25 • *Pence et al. v. Sober Living By The Sea, Inc. et al.*, Orange County Superior Court Case
26 No. 30-2018-00988742-CU-OE-CXC (final approval granted September 24, 2021)
27 (Judge Randall Sherman);

- *Rico v. Western Mesquite Mines, Inc.*, Imperial County Superior Court Case No. ECU000873) (final approval granted October 14, 2021) (Judge Jeffrey B. Jones); and
- *Guillen-Rivas v. San Diego Farms, LLC*, San Diego County Superior Court Case No. 37-2019-00024215-CU-OE-CTL (preliminary approval granted June 3, 2021; final approval hearing scheduled for March 8, 2022) (Judge Richard S. Whitney); and
- *Bollinger-Felt et al. v. Pacific Bells, LLC*, Stanislaus County Superior Court Case No. CV-20-0000680 (final approval granted January 25, 2022) (Hon. Stacey P. Speiller).

I have also represented numerous individual employees in cases brought under various statutes and theories for recovery, including the California Labor Code and the California Fair Employment and Housing Act, and have obtained favorable results in many of those cases.

17. I am an active of member of the plaintiff's employment bar association called the California Employment Lawyers Association ("CELA") and a member of the Los Angeles County Bar Association's Labor and Employment Law Section Executive Committee and Annual Symposium Committee.

18. I am also adjunct faculty with University Gould School of Law where I co-lead the Employment Mediation Clinic, teaching law students to mediate real employment disputes lodged before the DFEH and EEOC.

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

Executed this March 3, 2022, at Los Angeles, California.



MARTIN SULLIVAN