

1 Daniel V. Santiago (State Bar No. 206532)
2 Law Offices of Daniel V. Santiago, P.C.
3 355 South Grand Avenue, Suite 2450
4 Los Angeles, California 90071
5 Phone: (760) 652-9801
6 Facsimile: (760) 652-9802
7 E-mail: dvs@dvslawoffices.com
8 Attorney for Plaintiff, Ana Hua

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

ANA HUA, individually and as representative
of the State of California on behalf of herself
and all aggrieved employees of Dana Elise
Solutions, LLC, a California limited liability
company,

Plaintiff,

v.

DANA ELISE SOLUTIONS, LLC, a California
limited liability company, DANA ELISE
PAYINDA, an individual, and DOES 1 through
20, inclusive,

Defendants.

Case No. 20STCV06038

**DECLARATION OF DANIEL V.
SANTIAGO IN SUPPORT OF
PLAINTIFF'S EX PARTE
APPLICATION FOR AN ORDER (1)
APPROVING THE SETTLEMENT OF
PLAINTIFF'S INDIVIDUAL PAGA
CLAIMS AGAINST THE DEFENDANTS
AND (2) DISMISSING THOSE PAGA
CLAIMS WITH PREJUDICE**

Judge: Mel Red Recana
Department: 45
Complaint Filed: February 13, 2020

I, Daniel V. Santiago, declare:

1. I am a member in good standing of the State Bar of California (California Bar No. 206532). I am counsel for the Plaintiff, Ana Hua, in the above-captioned representative action against the Defendants, Dana Elise Solutions, LLC and Dana Elise Payinda, currently pending before the Honorable Judge Mel Red Recana in the Los Angeles Superior Court, Case No. 20STCV06038 ("the Action").

2. I respectfully submit this declaration in support of Plaintiff's Ex Parte Application for an Order: (1) approving the settlement of Plaintiff's individual PAGA claims against the

1 Defendants; and (2) dismissing those PAGA claims with prejudice (“Plaintiff’s Ex Parte
2 Application”).

3 3. Plaintiff brings this representative action against Defendant under the Private
4 Attorneys General Act of 2004 (“PAGA”), California Labor Code (“Labor Code”) §2698 et seq., as
5 representative of the State of California on behalf of himself and all aggrieved employees of
6 Defendant. As used in Plaintiff’s Complaint, the term “aggrieved employees” consists of all
7 California residents who worked for Dana Elise Solutions, LLC as electrologists in the State of
8 California at any time within one year preceding the filing of the Complaint up to and through the
9 time of trial. Plaintiff is informed and believes there are approximately 15 aggrieved employees, as
10 defined.

11 4. By this representative action, Plaintiff seeks recovery of civil penalties arising from
12 Defendants’ alleged: (a) failure to pay all wages due and owing in violation of Labor Code
13 §§204(a), 510(a), 1194(a) and 1197 (Second Cause of Action); (b) failure to furnish accurate
14 itemized wage statements in violation of Labor Code §226(a) (Fourth Cause of Action); (c) failure
15 to indemnify necessary business expenditures in violation of Labor Code §2802(a) (Sixth Cause of
16 Action); (d) failures to provide meal periods under Labor Code §512(a) and IWC Wage Order No.
17 2-2001, §11(A)-(C) and to pay meal period premiums in violation of Labor Code §226.7(c) and
18 IWC Wage Order No. 2-2001, §11(D) (Seventh Cause of Action); (e) failures to authorize and
19 permit rest periods under IWC Wage Order No. 2-2001, §12(A), and to pay rest period premiums in
20 violation of IWC Wage Order No. 2-2001, §12(B) and Labor Code §226.7(c) (Ninth Cause of
21 Action); (f) failure to timely pay all wages due upon termination of employment in violation of
22 Labor Code §§201-203 (Eleventh Cause of Action); and (g) willful misclassification of Plaintiff and
23 the other aggrieved employees as independent contractors in violation of Labor Code §226.8
24 (Twelfth Cause of Action).

25 5. On February 13, 2020, Plaintiff filed her Complaint against the Defendants asserting,
26 *inter alia*, the various causes of action listed above.

1 6. Defendants have filed a general denial of the material allegations in Plaintiff's
2 Complaint and asserted various affirmative defenses. Additionally, I am informed that Defendant
3 denies any violation of the Labor Code or other wrongdoing.

4 7. At the Initial Case Management Conference on July 16, 2020, Plaintiff's counsel
5 advised the Court, *inter alia*: the parties are engaged in settlement discussions; the parties were
6 close to reaching a settlement; and, if a settlement is reached, Plaintiff's counsel would submit to
7 the Court a [Proposed] Order approving the settlement of certain PAGA claims, as required.

8 8. No trial date is currently set in the Action.

9 9. The parties recently agreed to settle the Plaintiff's individual PAGA claims against
10 the Defendants at issue in this action for Three Thousand Dollars (\$3,000) subject to the Court's
11 entry of an Order: (a) approving of the settlement of Plaintiff's individual PAGA claims; (b)
12 dismissing Plaintiff's individual PAGA claims with prejudice; and (c) dismissing Plaintiff's PAGA
13 claims on behalf of other aggrieved employees without prejudice.

14 The proposed settlement of Plaintiff's individual PAGA claims against the Defendants calls for the
15 following payments: (a) One Thousand Eight Hundred Seventy Five Dollars (\$1,875) to the Labor
16 and Workforce Development Agency ("LWDA") (which reflects 75% of the settlement amount not
17 attributable to attorney's fees in accordance with Labor Code §2699(i)); (b) Six Hundred Twenty
18 Five Dollars (\$625) to the Plaintiff (which reflects 25% of the settlement amount not attributable to
19 attorney's fees in accordance with Labor Code §2699(i)); and (c) Five Hundred Dollars (\$500) to
20 the Law Offices of Daniel V. Santiago which reflects one-sixth of the gross settlement amount and
21 compensation for a portion of the attorney's fees and costs incurred by Plaintiff's counsel in the
22 prosecution of Plaintiff's individual PAGA claims against the Defendants.

23 10. I respectfully submit that the proposed settlement in the Action is fair and reasonable
24 in light of the following factors, among others: (a) any settlement, including the proposed settlement
25 in the Action, should take into consideration the time, inconvenience and uncertainty of trial that are
26 avoided by the settlement; (b) under Labor Code §2699(i), the aggrieved employees are entitled to
27 receive only 25% of any PAGA settlement with the remaining 75% to be paid to the LWDA; and
28 (c) Plaintiff contends that the penalties recoverable by him with regard to his individual PAGA

claims as outlined below are not substantially greater than the gross settlement amount of the proposed settlement (\$3,000) or the sum of the LWDA's and Plaintiff's shares of the proposed settlement (\$2,500).

11. I am informed that Defendants do not concur or assent to the factual allegations underlying Plaintiff's claimed civil penalties, the amounts of such penalties, or the calculations of such penalties described below.

12. Plaintiff estimates that the civil penalties recoverable by her with regard to her individual PAGA claims is approximately \$15,450 calculated as follows:

Nature of Claim	Type Of Claim	Amount	Description
PAGA Claim on Behalf of Ms. Hua	Misclassification as Independent Contractor	\$5,000	Civil penalty of at least \$5,000 for employer's willful misclassification of employee as independent contractor under Labor Code §226.8
PAGA Claim on Behalf of Ms. Hua	PAGA Penalty For Unpaid Wages (Per Pay Period Penalty)	\$650	\$50 for the initial pay period + \$100 for each of the subsequent 6 pay periods = \$650 (25% or \$162.50 payable to Ms. Hua and 75% or \$487.50 payable to the LWDA under PAGA)
PAGA Claim on Behalf of Ms. Hua	PAGA Penalty For Itemized Wage Statement Violations ¹	\$650	\$50 for the initial pay period + \$100 for each of the subsequent 6 pay periods = \$650 (25% or \$162.50 payable to Ms. Hua and 75% or \$487.50 payable to the LWDA under PAGA)
PAGA Claim on Behalf of Ms. Hua	PAGA Penalty For Failure To Reimburse Business Expenses	\$1,300	\$100 for the initial pay period + \$200 for each of the subsequent 6 pay periods = \$1,300 (25% or \$325 payable to Ms. Hua and 75% or \$975 payable to the LWDA under PAGA)
PAGA Claim on Behalf of Ms. Hua	PAGA Penalty For Meal Period Violations	N/A	N/A
PAGA Claim on Behalf of Ms. Hua	PAGA Penalty For Rest Period Violations	\$650	\$50 for the initial pay period + \$100 for each of the subsequent 6 pay periods = \$650 (25% or \$162.50 payable to Ms. Hua and 75% or \$487.50 payable to the LWDA under PAGA)
PAGA Claim on Behalf of Ms. Hua	PAGA Penalty For Failure To Timely Pay All Wages Due Upon	\$7,200	\$40 per hour X 6 hours per day X 30 days = \$7,200 (25% or \$1,800 payable to Ms. Hua and 75% or \$5,400 payable to the LWDA under PAGA)

¹ Labor Code §226(e)(1), which sets forth elements of a private cause of action for an employer's knowing and intentional violation of itemized wage statement requirements, permits the recovery of statutory damages rather than a civil penalty. As a result, the "knowing and intentional requirement" is not applicable to a claim under PAGA for recovery of civil penalties based on violation of itemized wage statement requirements. *Lopez v. Friant & Associates, LLC*, 15 Cal. App. 5th 773, 784-785 (2018).

1		Termination of Employment ²		
2	Total		\$15,450	

3
4 13. For settlement purposes, it is reasonable to discount Plaintiff's estimate of the civil
5 penalties potentially recoverable by her with regard to her individual PAGA claims (\$15,450) by
6 50% to reflect the benefits of avoiding the delays associated with continued litigation and by
7 another 50% to reflect the uncertainty of obtaining a favorable verdict at trial. Moreover, for
8 settlement purposes, it is reasonable to discount the resulting figure after the aforementioned
9 discounts (\$3,862.50) to \$3,000 given the Court's wide discretion to reduce the civil penalties
10 potentially recoverable by Plaintiff with regard to her individual PAGA claims.

11 14. The total amount of the attorney's fees to be received by my law firm in connection
12 with the settlement of Plaintiff's individual PAGA claims at issue in the Action reflects a very small
13 percentage of the reasonable value of my legal services with regard to Plaintiff's claims. To date, I
14 have invested more than 40 hours in the prosecution of Plaintiff's individual PAGA claims at issue
15 in the Action. My hourly rate is \$375 per hour.

16 15. I have submitted copies of Plaintiff's Ex Parte Application and all related papers to
17 the LWDA (via online filing with the LWDA) contemporaneously with the filing of those papers. I
18 do not anticipate receiving any objection or other communication from the LWDA regarding the
19 relief requested in Plaintiff's Ex Parte Application. I will advise the Court whether I have received
20 any such objection or other communication from the LWDA during the hearing on Plaintiff's Ex
21 Parte Application.

22 16. I respectfully submit that Plaintiff's Ex Parte Application is warranted in light of the
23 following factors, among others: (1) the parties are prepared to consummate the aforementioned
24 settlement immediately after the Court approves of the settlement of Plaintiff's individual PAGA
25 claims against the Defendants, dismisses Plaintiff's individual PAGA claims against the Defendants

26
27 ² See, e.g., *Esparza v. KS Industries, L.P.*, 13 Cal. App. 5th 1228, 1242 (2017) ("Another example of a 'civil
28 penalty' is provided by Labor Code section 256, which states '[t]he Labor Commissioner shall impose a civil
penalty in an amount not exceeding 30 days pay as waiting time under the terms of [Labor Code] Section
203.'")

1 with prejudice, and dismisses Plaintiff's PAGA claims against the Defendants on behalf of other
2 aggrieved employees without prejudice; (2) there is no just reason to delay the consummation of the
3 aforementioned settlement; and (3) given the congestion in the Court's calendar, Plaintiff
4 anticipates an undue delay if this matter were heard on a regularly noticed motion.

5 17. Notice to the other aggrieved employees of the proposed dismissals described herein
6 is not required because, among other reasons, this is not a putative class action, notice of this
7 representative action has not been required to be provided (and has not been provided) to the other
8 aggrieved employees, and the proposed dismissals described herein will not prejudice any of the
9 other aggrieved employees. *See, e.g., Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1122
10 (9th Cir. 2014) ("PAGA has no notice requirements for unnamed aggrieved employees, nor may
11 such employees opt out of a PAGA action); *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110,
12 1134 (N.D. Cal. 2016) ("PAGA does not require class actions procedures, such as notice and opt-
13 out rights."); and *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 134077, at *5 (N.D. Cal. Apr.
14 2, 2010) ("Unnamed employees need not be given notice of the PAGA claim, nor do they have the
15 ability to opt-out of the representative PAGA claim.")

16 18. The following factors, among others, support the conclusion that the proposed
17 dismissals described herein will not prejudice any of the other aggrieved employees: (a) the
18 *Baumann*, *O'Connor* and *Ochoa-Hernandez* cases cited above, among other cases, support the
19 propositions that unnamed aggrieved employees need not be given notice of the PAGA claim, and
20 they do not have the right to opt-out of the PAGA claim; (b) I am unaware of any other aggrieved
21 employees' reliance on the Plaintiff to prosecute this representative action for his or her benefit; and
22 (c) I am unaware of any factor that prevents any other aggrieved employee from pursuing individual
23 claims against the Defendants, or either of them, if he or she elects to do so.

24 19. The parties have agreed to the final language of the Settlement Agreement and
25 Release of All Claims reflecting the settlements of Plaintiff's individual non-PAGA claims against
26 the Defendants that are at issue in the Action as well as Plaintiff's individual PAGA claims against
27 the Defendants that are at issue in the Action.
28

1 20. On August 3, 2020, I emailed John Connolly (Defendant's attorney) drafts of
2 Plaintiff's Ex Parte Application and all related papers.

3 21. On August 5, 2020, Mr. Connolly informed me that he does not oppose the relief
4 requested in Plaintiff's Ex Parte Application.

5 I declare under penalty of perjury under the laws of California that the foregoing is true and
6 correct, and that this declaration was executed on August 6, 2020.

7 

8 Daniel V. Santiago
9 Attorney for Plaintiff, Ana Hua