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**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

**MEMORANDUM OF POINTS AND
AUTHORITIES 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

The Plaintiff, Ana Hua, by and through her undersigned counsel, respectfully submits this Memorandum of Points and Authorities in support of her Ex Parte Application for an Order: (1) approving the settlement of her individual PAGA claims against the Defendants, Dana Elise Solutions, LLC, and Dana Elise Payinda; (2) dismissing Plaintiff's individual PAGA claims against the Defendants *with* prejudice; and (3) dismissing Plaintiff's PAGA claims against the Defendants on behalf of other aggrieved employees *without* prejudice.

I. SUMMARY OF THE CLAIMS AT ISSUE

Plaintiff's Individual and Representative Action Complaint against the Defendants alleges various claims (individually and as representative of the State of California on behalf of herself and

1 all aggrieved employees of Dana Elise Solutions, LLC under the Private Attorneys General Act of
2 2004 ["PAGA"], California Labor Code ["Labor Code"] §2698 et seq.) arising from Defendants'
3 alleged misclassification of Plaintiff and the aggrieved employees as independent contractors and
4 corresponding violations of the Labor Code and Industrial Welfare Commission ("IWC") Wage
5 Order No. 2-2001. (Declaration of Daniel V. Santiago ["DVS Decl."] filed under separate cover,
6 ¶3). As used in Plaintiff's Complaint, the term "aggrieved employees" consists of all California
7 residents who worked for Dana Elise Solutions, LLC as electrologists in the State of California at
8 any time within one year preceding the filing of the Complaint up to and through the time of trial.
9 Plaintiff is informed and believes there are approximately 15 aggrieved employees, as defined.
10 (DVS Decl., ¶3).

11 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). (DVS Decl., ¶4).

25 II. STATUS OF THE LITIGATION

26 On February 13, 2020, Plaintiff filed her Complaint against the Defendants asserting, *inter*
27 *alia*, the various causes of action listed above. (DVS Decl., ¶5). Defendants have filed a general
28 denial of the material allegations in Plaintiff's Complaint and asserted various affirmative defenses.

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(DVS Decl., ¶6). At the Initial Case Management Conference on July 16, 2020, Plaintiff's counsel advised the Court, *inter alia*: the parties are engaged in settlement discussions; the parties were close to reaching a settlement; and, if a settlement is reached, Plaintiff's counsel would submit to the Court a [Proposed] Order approving the settlement of certain PAGA claims, as required. (DVS Decl., ¶7). No trial date is currently set. (DVS Decl., ¶8).

III. PROPOSED SETTLEMENT OF PLAINTIFF'S INDIVIDUAL PAGA CLAIMS

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

The proposed settlement of Plaintiff's individual PAGA claims against the Defendants calls for the following payments: (a) One Thousand Eight Hundred Seventy Five Dollars (\$1,875) to the Labor and Workforce Development Agency ("LWDA") (which reflects 75% of the settlement amount not attributable to attorney's fees in accordance with Labor Code §2699(i)); (b) Six Hundred Twenty Five Dollars (\$625) to the Plaintiff (which reflects 25% of the settlement amount not attributable to attorney's fees in accordance with Labor Code §2699(i)); and (c) Five Hundred Dollars (\$500) to the Law Offices of Daniel V. Santiago which reflects one-sixth of the gross settlement amount and compensation for a portion of the attorney's fees and costs incurred by Plaintiff's counsel in the prosecution of Plaintiff's individual PAGA claims against the Defendants. (DVS Decl., ¶10).

The proposed settlement in this action is fair and reasonable in light of the following factors, among others: (a) any settlement, including the proposed settlement in this action, should take into consideration the time, inconvenience and uncertainty of trial that are avoided by the settlement; (b) under Labor Code §2699(i), the aggrieved employees are entitled to receive only 25% of any PAGA settlement with the remaining 75% to be paid to the LWDA; and (c) Plaintiff contends that the civil penalties recoverable with regard to his individual PAGA claims and a reasonable evaluation of such penalties for settlement purposes, as outlined in the DVS Decl. at ¶¶12-13, are not

1 substantially greater than the gross settlement amount of the proposed settlement (\$3,000) or the
2 sum of the LWDA's and Plaintiff's shares of the proposed settlement (\$2,500). (DVS Decl., ¶11).¹

3 **IV. PLAINTIFF REQUESTS THE COURT'S APPROVAL OF THE PROPOSED**
4 **SETTLEMENT OF HER INDIVIDUAL PAGA CLAIMS, AS REQUIRED.**

5 Plaintiff requests the Court's approval of the proposed settlement of her individual PAGA
6 claims against the Defendants in accordance with Labor Code §2699(1)(2) which requires Court
7 approval for every PAGA settlement.² Labor Code §2699(1)(2) further requires that the proposed
8 PAGA settlement be submitted to the Labor and Workforce Development Agency ("LWDA") at the
9 same time that it is submitted to the Court. Accordingly, Plaintiff has submitted copies of her
10 Notice of Plaintiff's Ex Parte Application and related papers to the LWDA (via online filing with
11 the LWDA) contemporaneously with the filing of those papers. (DVS Decl., ¶15). Plaintiff's
12 counsel does not anticipate receiving any objection or other communication from the LWDA
13 regarding the relief requested herein. (DVS Decl., ¶15). Plaintiff's counsel will advise the Court
14 whether he has received any such objection or other communication from the LWDA during the
15 hearing on this Ex Parte Application. (DVS Decl., ¶15).

16 **V. NECESSITY FOR EX PARTE APPLICATION**

17 Plaintiff respectfully submits that this Ex Parte Application is warranted in light of the
18 following factors, among others: (1) the parties are prepared to consummate the aforementioned
19 settlement immediately after the Court approves of the settlement of Plaintiff's individual PAGA
20 claims against the Defendants, dismisses Plaintiff's individual PAGA claims with prejudice, and
21 dismisses Plaintiff's PAGA claims on behalf of other aggrieved employees without prejudice; (2)
22 there is no just reason to delay the consummation of the aforementioned settlement; and (3) given
23 the congestion in the Court's calendar, Plaintiffs anticipate an undue delay if this matter were heard
24 on a regularly noticed motion. (DVS Decl., ¶16).

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27 ¹Defendants do not concur or assent to the factual allegations underlying Plaintiff's claimed civil penalties,
28 the amounts of such penalties, or the calculations of such penalties. (DVS Decl., ¶12).

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

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

21 **VI. REQUESTED RELIEF**

22 For the foregoing reasons, Plaintiff respectfully requests that the Court enter an Order: (1)
23 approving the settlement of Plaintiff’s individual PAGA claims against the Defendants and the
24 corresponding payments of (a) \$1,875 to the LWDA, (b) \$625 to Plaintiff, and (c) \$500 to
25 Plaintiff’s counsel which reflects payment of a portion of the attorney’s fees and costs incurred by
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27 ² Labor Code §2699(1)(2) provides that “[t]he superior court shall review and approve any settlement of any
28 civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same
time that it is submitted to the court.”

1 Plaintiff's counsel in the prosecution of Plaintiffs' individual PAGA claims against the Defendants;
2 (2) dismissing Plaintiff's individual PAGA claims against the Defendants *with* prejudice; (3)
3 dismissing Plaintiff's PAGA claims against the Defendants on behalf of other aggrieved employees
4 *without* prejudice; and (4) granting such additional relief as the Court deems just and appropriate.
5 Plaintiff respectfully files under separate cover a [Proposed] Order reflecting the relief requested
6 herein. Notably, Defendants' counsel has informed Plaintiff's counsel that Defendants' counsel
7 does not oppose the relief requested herein or the scheduling of the hearing on this Ex Parte
8 Application. (DVS Decl., ¶21).

9 Dated: August 6, 2020

LAW OFFICES OF DANIEL V. SANTIAGO, P.C.

10 By:


11 Daniel V. Santiago, Esq.
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