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ATTORNEYS FOR PLAINTIFF, LISSETTE NUNEZ PAREDES
AND THOSE SIMILARLY SITUATED

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN MATEO
UNLIMITED JURISDICTION

LISSETTE NUNEZ PAREDES,
INDIVIDUALLY AND ON BEHALF OF THOSE
SIMILARLY SITUATED,

PLAINTIFF,

V.

JSN BAY CONTRACT, INC., A
CALIFORNIA CORPORATION, AND DOES 1
THROUGH 10, INCLUSIVE,

DEFENDANTS.

) CASE No. 20-CIV-02362

) **PLAINTIFF'S SUPPLEMENTAL**
) **BRIEF IN SUPPORT OF UNOPPOSED**
) **MOTION FOR APPROVAL OF PAGA**
) **SETTLEMENT**

) **DATE: AUGUST 3, 2021**

) **TIME: 8:30 A.M.**

) **DEPT: 4**

) **JUDGE: HON. NANCY L. FINEMAN**

I. INTRODUCTION

At the June 29, 2021 hearing relating to Plaintiff's Unopposed Motion to Approve the Private Attorneys General Act ("PAGA") settlement, the Court ordered the parties to address a number of concerns. Below, Plaintiff Lissette Nunez Paredes ("Paredes") addresses each of the Court's concerns and respectfully requests that the Court approve the PAGA settlement.

II. DISCUSSION

A. Filing Complaint with Labor Workforce Development Agency

The Court noted that Paredes had not yet filed the Complaint with the Labor Workforce Development Agency ("LWDA"). After obtaining the Court's tentative ruling on June 28, 2021, Paredes filed the Complaint that day with the LWDA. (Supp. Woodall Decl. in Supp. of Mtn. for Approval of PAGA Sett. ("Supp. Woodall Decl."), ¶ 18.)

B. Verification in Woodall Declaration

The Court found the evidence submitted was insufficient because the Woodall Declaration submitted in support of the Motion included a verification that stated, "to the best of my knowledge." The supplemental Woodall declaration removes this language in the verification and not only restates all information in the original declaration, but additional information requested by the Court.

C. PAGA Administrative Notice

The Court noted Paredes did not submit a copy of the PAGA notice provided to the LWDA in March, 2020. Attached to the Supplemental Woodall Declaration, as Exhibit A, is the PAGA notice submitted in March, 2020. (Supp. Woodall Decl., Exh. A.)

D. Maximum Potential Liability and Risks of Litigation

The Court ordered Paredes to provide additional information relating to the maximum potential liability and risks of litigation. In the Supplemental Woodall Declaration, Paredes includes additional facts and analysis of the maximum potential

1 liability and risks of litigation, among other things. (Supp. Woodall Decl., ¶ 5.)
2 Specifically, during informal discovery, Defendant JSN Bay Contract, Inc. ("JSN")
3 revealed that approximately 46 employees received wage statements that did not contain
4 partial social security numbers or employee identification numbers, which amounts to
5 approximately 1,380 improper wage statements from late March, 2019 until in or about
6 June, 2020. (*Id.*) The maximum potential PAGA penalties associated with the wage
7 statement claim are \$138,000 (1,380 improper wage statements x \$100 penalty). (*Id.*)
8 JSN represented this was an inadvertent error, which was corrected in or about June,
9 2020 when it discovered the error. (*Id.*) JSN also argued the employees were not
10 damaged by this error and this was simply a "gotcha" claim. (*Id.*)

11 The sample of wage statements and time entry records showed there were
12 approximately 180 pay periods where employees started a meal period late or did not take
13 the full 30 minutes, which provides an estimated maximum PAGA penalty of \$18,000
14 (180 pay periods with late or missing meal periods x \$100 penalty). (*Id.*) Although there
15 are no records kept regarding rest periods, Paredes argued that during an equal number of
16 pay periods (180 pay periods), employees missed rest periods and the maximum potential
17 PAGA penalties are \$18,000 (180 pay periods where employees missed rest periods x
18 \$100 penalty). (*Id.*) JSN argued that its policies and practices authorized and permitted
19 employees to take compliant meal and rest periods and employees chose to waive them or
20 take them late. (*Id.*)

21 In addition to its defenses above, JSN argued the Court has discretion not to award
22 any PAGA penalties or greatly reduced PAGA penalties under Labor Code § 2699(e)(2)
23 (a court may award a lesser amount than the maximum civil penalty amount specified by
24 this part if, based on the facts and circumstances of the particular case, to do otherwise
25 would result in an award that is unjust, arbitrary and oppressive, or confiscatory). (*Id.*)
26 Thus, although the maximum potential PAGA penalties are approximately \$174,000
27 (\$138,000 + \$18,000 + \$18,000), there were substantial risks the PAGA penalties
28 awarded after lengthy and costly litigation would have been substantially less or none at

1 all. (*Id.*) In fact, given the defenses asserted by JSN, Paredes' counsel believes the
2 realistic potential PAGA penalties are between \$90,000 to \$110,000. If JSN were in
3 good financial shape, Paredes would have expected a settlement in that range or more,
4 but JSN disclosed that it lost six figures in 2020 due to the pandemic, that its business is
5 still anemic in 2021 and thus, its ability to pay the asserted PAGA penalties is not
6 possible. (*Id.*) Given the above risks, Paredes agreed to settle the matter for \$65,000,
7 which is approximately 60-72 percent of the realistic PAGA penalties. (*Id.*)

8 **E. Defendant's Financial Condition**

9 The Court requested that JSN provide more detail relating to its financial
10 condition, instead of just stating that it lost \$100,000 during COVID-19 in 2020. With
11 this supplemental brief, JSN is submitted a supplemental declaration that provides
12 additional information.

13 **F. Separate Settlement of Plaintiff**

14 The Court requested additional information regarding the separate release that
15 Paredes negotiated and the amount she received as part of that settlement. The settlement
16 of Paredes' individual claims occurred in early, 2020, prior to the mediation in this case.
17 (Supp. Woodall Decl., ¶ 19.) As JSN's counsel mentioned at the June 29, 2021 hearing,
18 Paredes' settlement of her individual claims is small. (*Id.*) Paredes' counsel in this case
19 did not represent Paredes in the matter involving her individual claims. (*Id.*) Another
20 firm represented Paredes in that matter. Paredes' counsel in this case is not receiving
21 anything relating to the settlement of Paredes' individual claims. (*Id.*)

22 **G. Attorney's Fees**

23 The Court questioned the attorney's fees in the settlement, as some work was not
24 conducted by an attorney with lesser skill and experience. As discussed at the June 29,
25 2021 hearing, Paredes' counsel did not record administrative time worked on the case.
26 (Suppl. Woodall Decl., ¶ 15.) Thus, the submitted contemporaneous time records do not
27 detail all time worked on this case. Further, as Paredes' counsel has vast experience and
28 is much more efficient than a junior associate,⁴ the amount of time it takes Paredes'

counsel to perform a task is a fraction of what it would take a junior associate. Not to mention the time it would have taken for Paredes' counsel to review and correct the work of a junior associate. Thus, whether Paredes' counsel performed the work or it was performed by a junior associate at half the billing rate, the total attorney's fees would be roughly the same. As further discussed at the June 29th hearing, the attorney's fees to be paid with this settlement represent 54 percent of lodestar of Paredes' counsel, a significant discount. (*Id.*, Exh. C.) Lastly, it is common in employment cases that the attorney's fees and costs can greatly exceed the damages and penalties owed.

H. PAGA Incentive Payment

The Court noted there is a split of authority among trial courts as to whether a plaintiff should receive an incentive payment as part of a PAGA settlement and no known decisions at the appellate level.

The analysis for incentive payments is the same for class actions and PAGA actions. A named plaintiff is an essential ingredient of any class action or PAGA action and an incentive award is appropriate to induce individuals to step forward and assume the burdens and obligations of representing a class or PAGA affected employees. *Willner v. Manpower Inc.* (N.D Cal. June 22, 2015) 2015 U.S. Dist. LEXIS 80697, *24-25 (quoting *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 977) (incentive fee awarded in class action). "These awards are . . . intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their **willingness to act as a private attorney general.**"" *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94 (emphasis added) (quoting *Rodriguez v. West Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948); see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 405; *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 491 (enhancement awards are appropriate because plaintiffs "undertook the financial risk that, in the event of a judgment in favor of [Defendants] in this action, [they] could have been personally responsible for any costs awarded in favor of [Defendants].");

1 *Campbell v. First Investors Corp.* (S.D. Cal. Oct. 29, 2012) 2012 WL 5373423, at *8
2 (enhancement awards are particularly appropriate in employment actions, where they
3 help to alleviate the “stigma upon future employment opportunities for having initiated an
4 action against a former employer.”

5 In other PAGA only cases, Paredes’ counsel has obtained incentive fees for
6 plaintiffs. In fact, in the last couple of years, the San Francisco Superior Court found a
7 \$15,000 incentive payment was appropriate in a PAGA only case. (Suppl. Woodall
8 Decl., ¶ 20.) Here, the incentive payment is appropriate because Paredes spent a
9 significant amount of time assisting with the prosecution of the case, including assisting
10 with facts, discovery and attending a full-day mediation session. (*Id.*) The agreed upon
11 amount in this case is small and will compensate Paredes for her time obtaining
12 compensation for other employees and the State of California and foregoing other
13 earnings. (*Id.*)

14 **I. Cy Pres Recipient**

15 The Court noted that having the San Francisco Bar Association as the cy pres
16 recipient is questionable, as this entity is receiving a referral fee from Paredes’ counsel.
17 Although having the San Francisco Bar Association as a cy pres recipient would not have
18 reduced the referral fees owed by Paredes’ counsel, the parties have stipulated that the cy
19 pres recipient will be changed to the San Mateo Bar Association. (Suppl. Woodall Decl.,
20 ¶ 6.)

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III. CONCLUSION

For the reasons above, the PAGA settlement is fair, adequate and reasonable and this motion should be granted in its entirety.

DATE: JULY 9, 2021

WOODALL LAW OFFICES

BY: 

KEVIN F. WOODALL
ATTORNEYS FOR PLAINTIFF, LISSETTE
NUNEZ PAREDES

PROOF OF SERVICE

I, Kevin F. Woodall, am a resident of the State of California and over the age of 18, and not a party to the within action; my business address is 100 Pine Street, Suite 1250, San Francisco, CA 94111.

ON JULY 9, 2021, I CAUSED TO BE SERVED THE DOCUMENT(S) DESCRIBED AS:
on the following interested parties at the following address:

**PLAINTIFF'S SUPPLEMENTAL BRIEF IN SUPPORT OF UNOPPOSED
MOTION FOR APPROVAL OF PAGA SETTLEMENT;**

**SUPPLEMENTAL DECLARATION OF KEVIN WOODALL IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION FOR APPROVAL OF PAGA
SETTLEMENT; AND**

**SUPPLEMENTAL DECLARATION OF ARACELY RIVERA IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION FOR APPROVAL OF PAGA
SETTLEMENT.**

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Attorneys for Defendant, JSN Bay Contract, Inc.

☐ (BY MAIL) I served the foregoing document(s) by U.S. mail. I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence was deposited with the United States Postal Service this same day in the ordinary course of business at Corte Madera, California.

☐ (BY FACSIMILE) I transmitted via facsimile, the document(s) listed above to the fax number(s) set forth above on this date from Corte Madera, California. The transmitting facsimile machine telephone number is (415) 413-4629.

☐ (BY FEDEX GROUND) I served the foregoing document(s) by placing it in a sealed envelope or container provided by Federal Express, affixing a pre-paid air bill for ground delivery, and causing the envelope or container to be delivered to a Federal Express agent or depositing it in a box or other facility regularly maintained by Federal Express.

☐ (BY PERSONAL DELIVERY) I caused to be personally delivered the foregoing document(s) to the individual(s) at the address(es) listed above.

☒ (BY EMAIL and E-SERVICE) I served the foregoing documents by sending them via email to Defendant's counsel listed above.

Executed this July 9, 2021 at Tahoe Vista, California.

1 I declare under penalty of perjury under the laws of the State of California and the United
2 States that the above is true and correct.



Kevin F. Woodall