

WOODALL LAW OFFICES
100 PINE STREET, SUITE 1250
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE: (415) 413-4629
FACSIMILE: (866) 937-4109
KEVIN@KWOODALLLAW.COM

KEVIN F. WOODALL, BAR NO. 180650

ATTORNEYS FOR PLAINTIFF, IVANA LEBRON

SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
UNLIMITED JURISDICTION

IVANA LEBRON,

PLAINTIFF,

V.

SYCAMORE HEALTHCARE
ASSOCIATES, A CALIFORNIA
CORPORATION, AND DOES 1 THROUGH 10,
INCLUSIVE,

DEFENDANTS.

) CASE No. C20-00981

)
) **DECLARATION OF KEVIN**
) **WOODALL IN SUPPORT OF**
) **UNOPPOSED MOTION FOR**
) **APPROVAL OF PAGA SETTLEMENT**

)
) DATE:
) TIME:
) DEPT: 21
) JUDGE: Hon. Jill C. Fannin

1 I, Kevin Woodall, declare and state as follows:

2 1. I am an attorney licensed to practice in the State of California and before this
3 Court. I am counsel to Plaintiff Ivana Lebron (“Lebron”) in the above-captioned matter.
4 Except as otherwise indicated, I have personal knowledge of the facts set forth in this
5 declaration.

6 **Claims and Procedural History**

7 2. On March 30, 2020, Lebron exhausted her Private Attorneys General Act
8 (“PAGA”) administrative notice requirements by filing a notice with the Labor
9 Workforce Development Agency (“LWDA”). Attached hereto as Exhibit A is a true and
10 correct copy of the PAGA administrative notice.

11 3. In early June, 2020, Lebron filed a complaint in this Court, in which she alleges
12 that Defendant Sycamore Healthcare Associates (“Sycamore”) violated the PAGA by
13 failing to: (1) pay overtime wages due under Labor Code §§ 510 and 1194; (2) issue
14 accurate and compliant wage statements required by Labor Code § 226; (3) timely pay
15 wages during employment and when employment ended, in violation of Labor Code §§
16 201-204; (4) provide meal and rest periods or premium pay for missed meal and rest
17 periods under Labor Code §§ 226.7 and 512; and (5) provide reporting time pay under
18 Labor Code § 1198. Lebron also pursued her individual wage and hour claims.

19 **Thorough Discovery Conducted**

20 4. Lebron propounded extensive formal and informal discovery requests prior to
21 settlement discussions including, but not limited to, the following document and
22 information requests: (1) a sampling of wage statements issued to non-exempt employees
23 from March, 2019 to present; (2) a sampling of time entry records of the same non-
24 exempt employees from March, 2019 to present; (3) policies used by Sycamore; (4) the
25 number of non-exempt employees and the number of pay periods worked from March,
26 2019 to present; and (5) how Sycamore changed its policies from March, 2019 to present.

27 **Litigation Risks and Potential Penalties**

28 5. During discovery, Sycamore produced the wage statements and time entry records

1 of approximately 30 non-exempt employees (representing 15-20 percent of all non-
2 exempt employees), from March 2019 to September, 2020. Sycamore disclosed there
3 were approximately 2,900 pay periods worked by non-exempt employees from late
4 March, 2019 to present. I analyzed the wage statements and time entry records and did
5 not identify any employees who reported to work and received less than two hours of
6 pay. Thus, I did not identify any reporting time pay violations, other than one instance
7 identified for Lebron. During my analysis of the records, I determined that
8 approximately 11 percent of the time, non-exempt employees worked more than 5 hours
9 before a meal period was taken, yet the individuals did not receive premium pay for a
10 missed meal period. This translates into approximately 300 pay periods where timely
11 meal periods were not taken, but premium pay was not paid, when extrapolated to all
12 non-exempt employees. While the records do not show and were not required to show
13 when employees took rest periods, Lebron estimated that there were roughly the same
14 number of rest period violations as meal period violations or 300 pay periods. In my
15 analysis, I also determined there were approximately 220 pay periods when non-exempt
16 employees on the night shift worked past midnight and Sycamore calculated hours
17 worked, including overtime hours, by the shift instead of the workday or workweek.
18 While this resulted in approximately 220 pay periods where the wage statements were
19 inaccurate regarding the hours worked at each rate of pay, I estimated that overtime was
20 not paid correctly during 50 pay periods (a fewer number who were not paid such wages
21 when their employment ended). My analysis also revealed that during 4 months, when
22 employees worked on the 31st of the month, their wage statements did not reflect the
23 correct hours worked in the pay period, approximately 400 pay periods.

24 6. As the PAGA provides maximum penalties of \$100 per pay period, the maximum
25 potential PAGA penalties were approximately \$127,000 (1,270 pay period violations x
26 \$100).

27 7. Despite the foregoing, Sycamore asserted various defenses. Sycamore asserted
28 that employees regularly waived their right to take meal periods or the right to take them

1 before the end of the fifth hour of work. Likewise, Sycamore asserted that many
2 employees waived their rest breaks. Sycamore also produced its meal and rest period
3 policy, which Sycamore claims is compliant with law. Additionally, Sycamore argued
4 that Lebron did not properly exhaust administrative notice requirements for the allegation
5 that the wage statements were incorrect for those who worked in the 31st day of a month.
6 Lastly, Sycamore argued the Court has discretion under the PAGA not to award any civil
7 penalties or to substantially reduce them.

8 8. Given the defenses raised by Sycamore, I believe the realistic potential recovery of
9 PAGA penalties is approximately \$75,000. Thus, the \$50,000 settlement, exclusive of
10 settlement administration fees and attorney's fees and costs, represents roughly 67% of
11 the realistic potential recovery, which is an outstanding result. Sycamore also confirmed
12 during the discovery process that it modified its practice to calculate the hours worked by
13 the defined workday and workweek, instead of the shift in or about May, 2020. Further,
14 Sycamore confirmed that it corrected its practice and paid employees in the correct pay
15 period when they worked on the 31st day in a month.

16 **Primary Settlement Terms**

17 9. In October, 2020, after discovery was produced and analyzed, the parties engaged
18 in lengthy settlement discussions. At the end, the parties settled Lebron's individual
19 claims and all PAGA claims for a total of \$127,500, in exchange for a full release of all
20 asserted PAGA claims and known and unknown individual claims of Lebron. I then
21 prepared the settlement agreement, which was executed by the parties. Attached hereto
22 as Exhibit B is a true and correct copy of the settlement agreement.

23 10. Of the \$127,500 gross settlement amount, the parties agreed that, subject to
24 Court approval, the State of California and PAGA Affected Employees would receive
25 \$50,000, Lebron would receive \$25,000 to resolve her individual claims, \$50,000 would
26 be paid in attorney's fees and costs related to Lebron's individual claims and the PAGA
27 claims, and \$2,500 would be paid to a settlement administrator, Phoenix Class Action
28 Administration Solutions. The parties further agreed that if any PAGA Affected

1 Employees failed to cash their checks after 180 days, the checks would be voided and the
2 unclaimed amount would revert to cy pres recipients in accordance with Civil Code §
3 384.

4 **The Settlement is Fair, Reasonable and Adequate**

5 11. I have been practicing law for nearly twenty-five years. After graduating
6 from the University of San Francisco School of Law (Magna Cum Laude) in 1995 and
7 my admission to the bar that same year, I first practiced as a Lieutenant in the Navy
8 Judge Advocate General's Corps until 1999. During that time, from approximately 1997
9 until 1999, I was a Special Assistant United States Attorney. In 1999, I left government
10 practice and worked for a small firm in San Francisco (Steyer, Lowenthal, Boodrookas
11 and Walker) before joining the international firm of Foley & Lardner LLP in early 2000.
12 For the next 10 ½ years, I was an Associate, Senior Counsel and Partner in Foley &
13 Lardner LLP's Labor and Employment Department (approximately 7 years as Senior
14 Counsel and Partner). In August, 2010, I started my own firm, which specializes in
15 employment litigation, including class actions and complex cases.

16 12. During my career, I have tried approximately 50 cases to either a jury, a
17 judge or an administrative board in the Navy and in federal and California courts, and
18 another 15-20 cases to an arbitrator. In the last 22 years, I have specialized in labor and
19 employment litigation. I have represented plaintiffs and defendants in numerous class
20 action and complex litigation cases, including well-known clients in wage and hour and
21 other class actions, such as Kmart Corporation, 24 Hour Fitness, Global Tel-Link
22 Corporation and Color Spot Nurseries. I have defeated class certification, certified class
23 actions and settled numerous class and PAGA cases. When representing plaintiffs in
24 wage and hour class actions and PAGA actions at my own firm, I have been appointed
25 class counsel and recovered millions of dollars for my clients. In the past, I was voted by
26 my peers as one of The Best Lawyers in the Bay Area with respect to employment
27 litigation.

28 13. In my opinion, I believe the settlement is very good result for the State of

1 California and the PAGA Affected Employees. While I believe Lebron can prevail, there
2 are significant hurdles to overcome to demonstrate liability, as set forth in more detail
3 above.

4 **Attorney's Rate and Time Spent Prosecuting the Action**

5 14. During the past ten years of my practice, the vast majority of my time has
6 been spent representing plaintiffs in employment cases, unlike earlier in my career when I
7 defended employers and corporations. As a plaintiff's attorney, I commonly represent
8 my clients on a contingency basis, which is an extremely risky proposition. In multiple
9 cases, I have worked thousands of hours and advanced tens of thousands of dollars and
10 costs, but was never paid for my time or reimbursed expenses because the employer filed
11 bankruptcy petitions or never paid the judgments and settlements obtained.

12 15. During this case, I have received requests for assistance from clients and
13 prospective clients, but I was not able to represent them because of the expected time
14 commitment involved in this case.

15 16. In this case, I represented Plaintiff Lebron, the State of California and
16 PAGA Affected Employees on a contingency basis. My current hourly rate is \$845. I
17 charge other clients similar amounts for class action and PAGA work. Attorneys with
18 similar experience charge more than me, as reflected in the 2019-2020 Updated Laffey
19 Matrix. Attached hereto as Exhibit C is a true and correct copy of the 2019-2020
20 Updated Laffey Matrix.

21 17. This year, the Superior Court of California, County of San Francisco,
22 determined my reasonable hourly rate for work performed in 2019 and 2020 was \$845.
23 Last year, the Superior Court of California, San Francisco County determined my \$795
24 hourly rate was reasonable for class action work performed from 2018-2019. In 2018,
25 the Superior Court of California, Alameda County determined my hourly rate of \$750 for
26 work performed from 2015 to 2018 was reasonable for class action and PAGA work.

27 18. I have spent many hours prosecuting this case. From March, 2020 to
28 present, I have performed a number of tasks to advance the litigation and resolve this

1 matter including, but not limited to, the following: (1) preparing the complaint; (2)
2 preparing the PAGA notice; (3) preparing informal and formal discovery requests; (4)
3 reviewing and analyzing documents, information and other discovery provided by
4 Sycamore; (5) engaging in lengthy settlement negotiations with opposing counsel; (6)
5 preparing the settlement agreement; (7) preparing the notice to be distributed to PAGA
6 Affected Employees; (8) obtaining quotes from proposed settlement administrators
7 (determining Phoenix had the best rate (\$2,500) and was recommended by other
8 attorneys); (9) conducting extensive research addressing various issues, including the
9 defenses raised by Sycamore; (10) having multiple discussions with Lebron; (11)
10 preparing a Case Management Conference statement and attending a Case Management
11 Conference; (12) preparing this motion and supporting declarations.

12 19. Attached hereto as Exhibit D are true and correct contemporaneous time
13 entry records that set forth the work performed and hours expended by me on this case.
14 As set forth in my time entry records, I have spent 72.4 hours on this case to date. In the
15 coming months, I plan to continue working with the Settlement Administrator to address
16 any issues, address any questions of the PAGA Affected Employees and attend the
17 hearing relating to this motion. I expect to spend another 10-15 hours on these issues
18 after this motion is filed. Thus, I expect to spend a total of 87.4 hours on this case.

19 **Attorney's Costs**

20 20. My firm has spent thousands of dollars prosecuting this action to a
21 successful resolution. Below are the costs incurred and to be incurred:

22 Filing Fees/One Legal/process service: \$686.50 (including filing fee to be paid)
23 PAGA filing fee: \$75
24 Research-Westlaw: \$450
25 Postage: \$15
26 Court Call costs: \$188 (including est. costs for hearing)
27 Est. Future One Legal/Process Service Fees and Filing Fees: \$150
28 **Total: \$1,564.50**

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PAGA Notice of Settlement

21. Notice of the PAGA settlement was communicated to the Labor Workforce Development Agency, including the motion papers filed in support of this motion. Attached hereto as Exhibit E is a true and correct copy of this notice.

Letter to Recipients of PAGA Payments

22. The parties prepared a letter to recipients of PAGA Payments. Attached hereto as Exhibit F is a true and correct copy of this letter.

I declare under penalty of perjury of the laws of California and the United States that this statement is true and correct to the best of my knowledge. Executed this 5th day of November, 2020, at Cathedral City, California.

KEVIN WOODALL