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

VICKY HOANG, individually and  
on behalf of other aggrieved  
employees,

Plaintiff,

v.

SCOTT WARMUTH, A  
PROFESSIONAL CORPORATION,  
a California business; SCOTT  
WARMUTH, an individual; DOES  
1-50,

Defendants.

Case No. 20STCV34680

*[Assigned for all purposes to the  
Hon. Monica Bachner, Dept. 71]*

**APPLICATION FOR AN ORDER  
APPROVING PAGA SETTLEMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

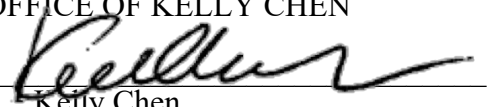
*[Filed concurrently with Stipulation for an Order  
Approving PAGA Settlement; Declaration of Kelly  
Chen; and [Proposed] Order]*

Complaint Filed: September 11, 2020

Plaintiff Vicky Hoang on behalf of herself and all other similarly situated individuals apply for an approval of the settlement under the Private Attorneys General Act of 2004, Cal. Lab. Code section 2698 *et seq.* ("PAGA"). This application is based on the parties' joint Stipulation for an Order Approving PAGA Settlement, the Memorandum of Points and Authorities attached herein, and Declaration of Plaintiff's counsel Kelly Chen.

LAW OFFICE OF KELLY CHEN

Dated: August 17, 2021

By: 

Kelly Chen  
Attorneys for Plaintiff VICKY HOANG

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. THE PRIVATE ATTORNEYS GENERAL ACT OF 2004.**

3 The California Labor & Workforce Development Agency (LWDA) and its constituent  
4 departments and divisions are authorized to assess and collect civil penalties for specified  
5 violations of the Labor Code committed by an employer. (See, Labor Code §2699(a).) With a  
6 stated goal of improving enforcement of existing Labor Code obligations, the Legislature adopted  
7 the Labor Code Private Attorneys General Act of 2004 (PAGA) codified at Labor Code sections  
8 2698 et seq., permitting, as an alternative, an aggrieved employee to initiate a private civil action  
9 for "civil penalties" which were previously enforceable only by the State's labor law enforcement  
10 agencies. (Labor Code §2699; *Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th  
11 365, 377.)

12 Before an employee may file an action seeking to recover such "civil penalties" for  
13 violations of any of the Labor Code provisions enumerated in section 2699.5 (which include  
14 violations of Labor Code claims which Plaintiff asserted in this action against Defendant), he or  
15 she must comply with PAGA's administrative procedures as set forth in Labor Code section  
16 2699.3(a) which include providing notice to the LWDA and waiting a prescribed period of time to  
17 permit the LWDA to investigate and to decide whether to cite the employer for the alleged  
18 violations. (*Caliber Bodyworks, supra*, 134 Cal.App.4th at 370; see also, *Dunlap v. Superior Court*  
19 (2006) 142 Cal.App.4th 330). If the LWDA fails to pursue the penalties, the employee may  
20 proceed in Court.

21 The process for PAGA settlement approval is very straightforward: "The superior court  
22 shall review and approve any settlement of any civil action filed pursuant to this part." Labor  
23 Code § 2699(1)(2). Based on the California Supreme Court's holdings in *Arias v. Superior*  
24 *Court* (2009) 46 Cal.4th 969 and *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59  
25 Cal.4th 348, there is no requirement under PAGA for a plaintiff to establish the requirements of  
26 class certification (*i.e.* numerosity, typicality, commonality and adequacy) nor is there the usual  
27 two-step preliminary and final approval process as found in class actions. Rather, the PAGA  
28 merely requires a one-step review and approval process.

Any PAGA penalties recovered by an employee, however, do not entirely belong to the employee. Instead, PAGA requires that 75% of the recovered penalties must be paid to the LWDA, while the remaining 25% may be retained by the employee who prosecuted the claim. (Labor Code §2699(i).) Where claims for PAGA penalties are settled by the parties, the parties must obtain Court approval of the settlement. (Labor Code §2699(1).)

## 2. THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES

The parties executed a settlement agreement relating to the wage and hour claims in this litigation containing the material terms of the settlement, including contingent upon the Court's approval of the PAGA settlement, for a total gross amount ("Gross Settlement Fund") in exchange for (a) release of Plaintiff's individual wage and hour claims, (b) a release of the PAGA claims on behalf of the State of California, LWDA, and the 79 or so aggrieved employees who are/were hourly-paid non-exempt office workers who were subjected to employer's deficient wage and hour practice. The identity of aggrieved employees will be made by employer's payroll records based on dates of employment and exemption status. The parties are only seeking court approval on the "PAGA Settlement Fund" or the "Net Settlement Amount" (as defined below), and Plaintiff is only presenting the Gross Settlement Fund herein for disclosure purpose.

### **Non-PAGA Related Terms Which Are Presented For Disclosure Purpose Only**

- **"Gross Settlement Fund:"** Gross Settlement Fund includes the amount allocated for Plaintiff's individual wage and hour (non-PAGA) claims and attorneys fees/costs associated for the prosecution of those claims. All payments for damages for Plaintiff's individual wage and hour claims and all payments to Plaintiff's counsel for fees and costs shall be deducted from the \$45,000 Gross Settlement Fund.
- **Plaintiff's Individual Wage Claims:** As consideration in exchange for Plaintiff's dismissal of all her individual wage and hour claims (causes of action #6-10 asserted

individually in the Complaint), Defendant shall pay the following amounts from the Gross Settlement Fund:

- \$2,500 as damages to her individual wage and hour claims to Plaintiff

VICKY HOANG from the Gross Settlement Fund

- **Attorneys' Fees and Litigation Costs:** \$15,000 in attorneys fees plus no more than \$600 in litigation costs to Plaintiff's Counsel, are to be paid from Gross Settlement Fund, for attorneys' fees and out-of-pocket costs pursuant to the Labor Code in connection with the prosecution of Plaintiff's wage and hour claims including the PAGA claim. See paragraphs 22-27 of Chen Declaration.

**PAGA-Related Term Which Are the Subject of this Request for Court Approval**

- The "PAGA Settlement Fund" or the "Net Settlement Amount" to be paid to the LWDA and Aggrieved Employees is \$26,900. Seventy-five percent (75%) or \$20,175 of the "PAGA Settlement Fund" shall be paid to the LWDA (which shall be used to assist in the enforcement of labor laws and education of employers and employees about their rights and responsibilities under the Labor Code), and the remaining twenty-five percent (25%) or \$6,725 shall be distributed to the Aggrieved Employees. See *Moorer*, 32 Cal.App.5th at 741. The settlement agreement complies with those requirements.
- The PAGA period as set forth in Paragraph 15, section I of the Settlement agreement is from June 25, 2019 through April 7, 2021.

**3. PLAINTIFF EXHAUSTED HER ADMINISTRATIVE CLAIMS UNDER PAGA.**

Here, Plaintiff exhausted her administrative claims for PAGA penalties with a letter (i.e., Notice of PAGA Claim) to the LWDA dated June 25, 2020 (See Exhibit 2 to Chen Declaration.) The LWDA never responded to Plaintiff's Notice of PAGA Claim.

1     **4.     PLAINTIFF’S INVESTIGATION/POTENTIAL RECOVERY**

2           As outlined in paragraphs 7-18 of Chen Declaration, Plaintiff conducted a thorough  
3 investigation of the extent of the PAGA violation prior to the settlement. This includes but was not  
4 limited to review of extensive payroll documents pertaining to the aggrieved employees and an  
5 estimate of the potential PAGA recovery.

6  
7     **5.     THE PARTIES SETTLED PLAINTIFF'S CLAIMS FOR PENALTIES UNDER**  
8     **PAGA.**

9           The wage and hour settlement agreement (Exhibit 1 to Chen Declaration) was signed by  
10 all parties in June of 2021 which included the settlement of Plaintiff’s individual wage claims as  
11 well as the PAGA claim. The agreement provides that the amount allocated as PAGA penalties  
12 (“PAGA Settlement”) will be distributed in accordance with the recent California Court of  
13 Appeals decision in *Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 741,  
14 specifically that 75% will go to the State government and the other 25% will be distributed to  
15 the aggrieved employees.

16          Plaintiff’s Complaint in this action generally seeks the recovery of all penalties available  
17 under the law, including claims for penalties under PAGA based on her claim that Defendant  
18 violated Labor Code Sections set forth in the PAGA Notice. The Parties settled all claims for  
19 penalties that Plaintiff arguably could have recovered under PAGA, should the case have gone to  
20 trial.

21          The Parties attributed a settlement value of \$26,900 to Plaintiff’s PAGA claims (see  
22 *Stipulation for an Order Approving PAGA Settlement* submitted concurrently with this  
23 Application). Several factors were considered in arriving at this settlement value:

24           (1) Defendants deny any liability in this matter; (2) Defendants deny any violations which  
25 would have entitled Plaintiff to recover penalties under PAGA; (3) the underlying facts of the case  
26 are in dispute; (4) there will be significant investments of time and expense by the Parties to  
27 litigate the claims for penalties under PAGA; (5) there is no guarantee of an outcome on the PAGA  
28 claims for either Party at trial; (6) the resolution of this dispute will be delayed until trial, and,

1 regardless of the outcome, there is a significant of risk of further delay due to appeals; (7) the case  
2 law interpreting the PAGA is sparse and subject to change; (8) any award of penalties under  
3 PAGA is within the discretion of the trial court; and (9) any alleged deficiencies raised in  
4 Plaintiff's Notice of PAGA claim have been corrected or modified (see Paragraph 10(a) of  
5 Settlement Agreement).

6  
7 **6. NOTICE TO LWDA**

8 As set forth in the Chen Declaration at paragraph 20, the Settlement Agreement and this  
9 application were submitted to the LWDA in accordance with Labor Code § 2699(1)(2). The  
10 proof of electronic submission is attached as Exhibit 3 to the Chen Declaration filed  
11 concurrently herewith.

12 Additionally, upon Court's approval of this PAGA settlement, Plaintiff's counsel will  
13 upload and submit the Court's signed order via LWDA's online process with the LWDA case  
14 number previously assigned by the LWDA pursuant to the requirement of Labor Code section  
15 2699(1)(3). See Paragraph 21 of Chen Declaration.

16  
17 **7. THE PARTIES REQUEST COURT APPROVAL OF THE SETTLEMENT OF**  
18 **PLAINTIFF'S PAGA CLAIM.**

19 The Parties are required to obtain the trial court approval of the settlement of any  
20 penalties sought as part of a proposed settlement of PAGA claims. (Labor Code  
21 §2699(1).) For all the reasons cited herein, the Parties agreed to settle Plaintiff's claims  
22 for penalties under PAGA. All counsel believe that the proposed settlement is to the  
23 advantage of their respective clients. See Stipulation submitted concurrently herein.

24 The LWDA was given the opportunity to investigate this matter after being given proper  
25 notice, but decided not to intervene. For all these reasons, Plaintiff respectfully requests the Court  
26 approve the settlement of the claims for penalties under PAGA, including the agreement for  
27 Defendant to pay 75% (\$20,175) of the \$26,900 PAGA settlement fund to the LWDA.

1 If this Honorable Court approves the PAGA Settlement, aggrieved employees will reach  
2 an average payment of about \$85.13 apiece (after deducting 75% to the LWDA). Of course,  
3 this number is a rough estimate. The actual number each employee receives depends on the  
4 number of pay periods worked by each employee, but the end result of this settlement is very  
5 good for the aggrieved employees. Each of the aggrieved employee (other than the named  
6 Plaintiff) is still free to pursue their individual wage and hour claims if they wish to.  
7

8 **8. CONCLUSION.**

9 Based on the foregoing as well as all documents submitted concurrently with this  
10 Application, Plaintiff is confident that an appropriate sum has been allocated to the disputed value  
11 of the "discretionary" PAGA penalties sought by Plaintiff, if any. Thus, based on the various  
12 factors discussed above, and to avoid further litigation of this matter, Plaintiff respectfully requests  
13 the Court approve the above referenced settlement of the claims for the PAGA penalties.  
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17 DATED: August 17, 2021

**LAW OFFICE OF KELLY Y. CHEN**

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19 By: \_\_\_\_\_

Kelly Y. Chen

Attorney for Plaintiff VICKY HOANG  
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