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Attorneys for PLAINTIFFS
JESUS GIL MALDONADO, FRANCISCO MORA, HOMERO OCHOA,
ISMAEL MORALES, and JESUS PRIETO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JESUS GIL MALDONADO,
FRANCISCO MORA, HOMERO
OCHOA, ISMAEL MORALES, and
JESUS PRIETO;

Plaintiffs,

v.

EXCEL HOTEL SERVICES, INC;
LANDMARK RESTORATION LTD;
CONSTELLATION REHAB SERVICES,
LLC; ABEL SIMON CURIALES; DAVID
REGY WESTBROOK; STEPHEN
DAVID PAYONE.

Defendants.

No. 20-CV-07512-LB

**DECLARATION OF ALEXANDER S.
RUSNAK IN SUPPORT MOTION FOR
ORDER APPROVING SETTLEMENT OF
FLSA AND PAGA CLAIMS**

Date: January 20, 2022
Time: 9:30 a.m.
Courtroom: B -15th Floor
Judge: Honorable Laurel Beeler

1
2 I, Alexander S. Rusnak, declare as follows:

- 3 1. I am one of the attorneys of record in this case. I have personal knowledge of the facts set forth
4 in this declaration, and, if called as a witness, I could and would testify thereto.
5
6 2. I am submitting this declaration to provide the factual basis for our recommendation to approve
7 the settlement reached under the Private Attorneys General Act, Cal. *Labor Code* § 2698 *et. seq.*
8 (“PAGA”).
9
10 3. I am providing this declaration on three issues: (1) the investigation into this case and my
11 opinion as to the value of this case; (2) my experience in wage and hour employment law; and
12 (3) my view on the settlement including the settlement amount and the PAGA apportionment.
13

14 **Investigation**

- 15 4. On January 21, 2020, Parties exchanged initial disclosures.
16
17 5. Plaintiffs Propounded Written Discovery in the form of interrogatories, requests for production
18 and requests for admission. Defendants responding to Plaintiffs discovery and produced some
19 pay and time records of Plaintiffs. Further, Defendant Constellation Rehab Services, identified
20 10 workers who worked in California during the period of time covered by Plaintiffs PAGA
21 claims.
22
23 6. Plaintiffs were able to identify approximately 27 workers who performed work for Defendants in
24 California during the period of time covered by Plaintiffs PAGA claims.
25
26 7. Defendants Excel Hotel Services, Inc. and Landmark Restorations, LLC propounded written
27 discovery in the form of interrogatories, requests for production and requests for admission for
28 which Plaintiff responded to.

- 1 8. Based upon the information provided by Defendants and Plaintiffs own records, Plaintiffs were
2 able to create a damage model as provided for by co-counsel Tomas E. Margain in his
3 accompanying declaration.
4

5
6 **Counsel's Experience in Wage and Hour Litigation and Time Records**
7

- 8 9. I graduated from Santa Clara University School of Law in 2014 and was admitted to the
9 California Bar that year. Since admitted, I have handled matters in the area of Consumer Rights,
10 such as unlawful debt collection practices and breaches of warranty, and Employee Rights, such
11 as wage-and-hour litigation and unlawful discrimination. Below are a few of my more recent
12 matters that required approval of PAGA claims.
13
14 10. On June 11, 2020, in the matter of *Michael Gruhlke v. Atilekt, Inc. et al.* (Santa Clara County
15 Court Case # 19CV341870), The Honorable Socrates P. Manoukian issued an Order approving
16 the settlement of Plaintiff's PAGA claim for \$124,859.30 in civil penalties (of a \$215,727.34
17 gross settlement excluding attorneys fees), which represented approximately 90% of Plaintiff's
18 PAGA claim for four workers who had been misclassified as independent contractors. Further,
19 the Court approved an hourly rate of \$350 per hour for legal services and \$425 for my colleague,
20 Jennifer Rusnak.
21
22 11. On November 4, 2020, in the matter of *Diego Gonzalez v. Golden State Granite, Inc. et al.*
23 (Contra Costa Superior Court Case No. MSC19-01703) the Honorable Edward E. Weil Judge
24 issued an Order approving the settlement of Plaintiff's PAGA claim for \$41,000.00 based upon a
25 PAGA claim with a maximum value of \$61,000.00.
26
27 12. On November 1, 2021, in the matter of *Balajadia et al. v. Helping Hands Residential Care*
28 *Home, Inc. et al.* (U.S. District Court for the Northern District of California Case. No. 5:21-cv-

00616-NC) The Honorable Nathanael M. Cousins issued an Order approving the settlement of Plaintiffs PAGA claims \$10,000.00 based upon a realistic maximum value of \$42,000.00.

13. Based upon my knowledge of rates for attorney services and prior awards for reasonable attorneys fees, my hourly rate is \$350.00 per hour.

14. Plaintiffs' counsel represented Plaintiffs on a contingent basis and advanced all costs associated with litigation.

15. The firm's practice is to maintain contemporaneous time records for hours worked. I have reviewed these records fees generated and costs incurred are listed in the table below.

ATTORNEY	RATE	HOURS	Total
Alexander S. Rusnak	\$350.00 per hour	93.8	\$32,830.00
Costs			\$4,882.83
TOTAL			\$37,712.83

16. Plaintiffs Counsel's billing can be summarized as follows:

- a. Counsel spent 12.1 hours with Plaintiffs preparing for litigation by investigating Defendants, preparing Plaintiffs' notice to the LWDA, and the Complaint.
- b. Counsel spent 25.7 hours communicating with Plaintiffs and opposing counsel, either telephonically, via email or via videoconference to discuss the status of the matter, strategizing with co-counsel or meeting and conferring as necessary through the course of litigation
- c. As this was a PAGA action that involved multiple employers, counsel reviewed the pay and time records of Defendants employees and client documents, review and assisted in the prepared an audit for each of the Plaintiffs payroll record, and well as a Damages Model for Plaintiffs' PAGA claims. This involved 12.9 hours of attorney time.

- d. Counsel propounding written discovery, responding written discovery, and reviewing Defendants responses to Plaintiffs written discovery, preparing for and attending Defendant's deposition. This involved 24.3 hours of attorney time.
- e. Counsel spent 13.9 hours preparing for mediation, including the preparation of Plaintiffs mediation brief, preparing Plaintiffs for mediation and finalizing the proposed settlement of claims post mediation.
- f. Counsel spent 3.1 hours preparing this Motion and accompany declaration.

17. Court intervention, such as the resolution of discovery disputes were unnecessary through settlement as counsel for parties were able to resolve all issues through the meet and confer process due their productive relationship.

18. Further Plaintiffs seek to allocate the \$4,882.83 for costs incurred:

Cost	Amount
Plaintiffs' First Appearance Fee	\$402.00
PAGA Notice Submission Fee to LWDA	\$75.00
Process Server Fees	\$239.00
Photo Copies - 2075 pages	\$179.78
Court Reporter and Room for Constellation/Simon Deposition.	\$2,807.05
Spanish Interpreter for Constellation/Simon Deposition	\$1,180.00
Postage for Service PAGA Notice	\$16.98
Total	<u>\$4,882.83</u>

Counsel Assessment of Settlement Terms

19. As shown in the proposed settlement for this case is for ONE HUNDRED AND NINETY THOUSAND DOLLARS (\$190,000.00). Of this amount FORTY-SIX THOUSAND SIX HUNDRED AND SEVENTY-THREE DOLLARS (\$46,673.00) is attributed to PAGA penalties, SIXTY-EIGHT THOUSAND THREE HUNDRED AND TWENTY SEVEN DOLLARS

(\$68,327.00) is allocated to attorneys fees and costs. SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) will be paid to Plaintiffs for their individual claims.

20. Based upon my review of Plaintiffs timesheet and payroll documents, Plaintiffs personally kept records, the settlement nearly makes Plaintiffs whole. Plaintiffs individual claims total approximately \$79,749.83. This settlement provides for \$75,000.00 to go to Plaintiffs directly, 94% of the full value of their claim, which will be distributed at proportionately amongst the individual Plaintiffs. Given the discrepancies between Defendants records, or at times, lack of records and Plaintiffs records, it is my opinion this represents a reasonable compromise as to the disputed hours worked.

21. Further, it is disputed that both Defendants EXCEL HOTEL SERVICES, INC. and LANDMARK RESTORATIONS, LLC employed Plaintiffs, and thus liable.

22. Plaintiffs' claims varied amongst each other not only in overtime compensation, as to expenses incurred, backpay based upon their ability to find suitable replacement employment. As such, without waiving the attorney-client privilege, the allocations in the settlement agreement reflect such variations and were agreed upon by Plaintiffs.

23. As to Plaintiffs PAGA penalties calculations and compromise, given: 1) the significant dispute as to the number of workers; 2) the significant number of pay periods subject to civil penalties and 3) no evidence of Settling Defendants having a pattern and practice of hiring unlicensed contractors in the State of California, the civil penalties assessed is a reasonable compromise. A majority of the civil penalties assessed in Plaintiffs damage model, \$750,000, goes to the pattern and practice of misclassifying 30 employees as independent contractors and assessing the maximum civil penalty of \$25,000 for each violation pursuant to *Labor Code* §226.8. Given the lack of records and dispute as to the number of workers, a compromise of assuming 20 workers

1 and assessing the minimum penalty of \$5,000.00 would lead to a civil penalty assessment of
2 \$100,000 rather than the \$750,000 civil penalty.

3 24. Further, given the uncertainty as to the number of employees who worked each period, the “per
4 aggrieved employee per pay period” penalty calculations in the damage model is uncertain and
5 was, based upon my experience, reasonably compromised due to this uncertainty.

6 25. The allocation of \$46,673.00 to civil penalties amounts to a recovery of approximately 10% of
7 realistic model of strongest PAGA claims, which ranges from \$380,000 to \$500,000, depending
8 on the number of workers.

9 26. It is my opinion that the amount of the proposed settlement, coupled with the parties interest to
10 promptly resolve this matter, and to avoid further litigation costs for an uncertain result is a fair
11 and reasonable resolution to the claims asserted. The relative amounts recovered as to individual
12 claims and PAGA penalties that have been recovered in other matters I have litigated.

13 I declare under penalty of perjury under the laws of California that the forgoing is true and correct.
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15 Dated: December 16, 2021

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19 Alexander S. Rusnak
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