

1 Daniel V. Santiago (SBN 206532)
2 LAW OFFICES OF DANIEL V. SANTIAGO, P.C.
3 355 South Grand Avenue, Suite 2450
4 Los Angeles, California 90071
5 Phone: (760) 652-9801
6 Facsimile: (760) 652-9802
7 E-mail: dvs@dvslawoffices.com
8 Attorney for Plaintiff, Kim D. Garcia

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
VAN NUYS COURTHOUSE EAST**

KIM D. GARCIA, individually and as
representative of the State of California on
behalf of herself and all aggrieved employees,

Plaintiff,

v.

GOOD KNIGHT INN, CORPORATION, a
California corporation, DIPANKAR ROY, an
individual, and DOES 1 through 20, inclusive,

Defendants.

Case No. 20VECV00968

**DECLARATION OF DANIEL V.
SANTIAGO IN SUPPORT OF
PLAINTIFF'S EX PARTE
APPLICATION FOR AN ORDER (1)
APPROVING THE SETTLEMENT OF
PLAINTIFF'S PAGA CLAIMS AGAINST
THE DEFENDANTS AND (2)
DISMISSING THOSE PAGA CLAIMS
WITH PREJUDICE**

Judge: The Honorable Valerie Salkin
Department: U
Complaint Filed: August 31, 2020

I, Daniel V. Santiago, declare:

1. I am a member in good standing of the State Bar of California (California Bar No. 206532). I am counsel for the Plaintiff, Kim D. Garcia, in the above-captioned representative action against the Defendants, Good Knight Inn, Corporation ("GKI") and Dipankar Roy, currently pending before the Honorable Judge Valerie Salkin in the Superior Court of the State of California, County of Los Angeles, Van Nuys Courthouse East, Case No. 20VECV00968 ("the Action").

1 2. I respectfully submit this declaration in support of Plaintiff's Ex Parte Application
2 for an Order: (1) approving the settlement of Plaintiff's PAGA claims against the Defendants; and
3 (2) dismissing those PAGA claims with prejudice ("Plaintiff's Ex Parte Application").

4 3. Plaintiff brings this representative action against Defendants under the Private
5 Attorneys General Act of 2004 ("PAGA"), California Labor Code ("Labor Code") §2698 et seq., as
6 representative of the State of California on behalf of herself and all aggrieved employees of GKI.
7 Plaintiff's claims against Defendants arise from alleged violations of the Labor Code and Industrial
8 Welfare Commission ("IWC") Wage Order No. 5-2001. As used in Plaintiff's Complaint, the term
9 "aggrieved employees" consists of all California residents who worked for GKI as housekeepers
10 and/or janitors at the Good Knight Inn Motel in North Hills, California, at any time within one year
11 preceding the filing of the Complaint in this action up to and through the time of trial (hereinafter
12 referred to as "the liability period"). There are 4 aggrieved employees (Plaintiff and three other
13 persons) according to GKI's Responses to Plaintiff's First Set of Special Interrogatories that GKI's
14 counsel served on January 20, 2020. Of note, GKI's Responses to Plaintiff's First Set of Special
15 Interrogatories are verified to be true and correct under penalty of perjury pursuant to the laws of
16 the State of California.

17 4. By this representative action, Plaintiff seeks recovery of civil penalties arising from
18 Defendants' alleged: (a) failures to pay all wages due and owing in violation of Labor Code
19 §§204(a), 510(a), 1194(a) and 1197 (First and Sixth Causes of Action); (b) failures to furnish
20 accurate itemized wage statements in violation of Labor Code §226(a) (Second and Seventh Causes
21 of Action); (c) failures to provide meal periods under Labor Code §512(a) and IWC Wage Order
22 No. 5-2001, §11(A) and to pay meal period premiums in violation of Labor Code §226.7(c) and
23 IWC Wage Order No. 5-2001, §11(B) (Third and Eighth Causes of Action); (d) failures to authorize
24 and permit rest periods under IWC Wage Order No. 5-2001, §12(A), and to pay rest period
25 premiums in violation of Labor Code §226.7(c) and IWC Wage Order No. 5-2001, §12(B) (Fourth
26 and Ninth Causes of Action); (e) failures to timely pay all wages due upon termination of
27 employment in violation of Labor Code §§201-203 (Fifth and Tenth Causes of Action); and (f)
28 failures to timely pay all wages due in violation of Labor Code §204(a) (Eleventh Cause of Action).

1 5. On August 31, 2020, Plaintiff filed her Complaint against the Defendants asserting,
2 *inter alia*, the various causes of action listed above. Defendants have filed a general denial of the
3 material allegations in Plaintiff's Complaint and asserted various affirmative defenses.
4 Additionally, I am informed that Defendants deny any violation of the Labor Code or other
5 wrongdoing.

6 6. The Final Status Conference is set for June 17, 2022, at 8:30 a.m., and the jury trial
7 is set for June 27, 2022, at 10:00 a.m. If the Court grants the relief requested in this Ex Parte
8 Application, Plaintiff would respectfully request that the Court vacate all dates on its calendar
9 (including the Final Status Conference and jury trial on June 17 and 27, 2022, respectively).

10 7. The parties recently agreed to settle the Plaintiff's PAGA claims against the
11 Defendants at issue in this action for Three Thousand Dollars (\$3,000) subject to the Court's entry
12 of an Order: (a) approving of the settlement of Plaintiff's PAGA claims; and (b) dismissing
13 Plaintiff's PAGA claims with prejudice.

14 8. The proposed settlement of Plaintiff's PAGA claims against the Defendants calls for
15 the following payments: (a) Two Thousand Two Hundred Fifty Dollars (\$2,250) (i.e., 75% of the
16 PAGA settlement in accordance with Labor Code §2699(i)) to the Labor and Workforce
17 Development Agency ("LWDA"); and (b) Seven Hundred Fifty Dollars (\$750) (i.e., 25% of the
18 PAGA settlement in accordance with Labor Code §2699(i)) to the Plaintiff and the other aggrieved
19 employees in an equal percentage or *pro rata* amount of One Hundred Eight Seven Dollars and
20 Fifty Cents (\$187.50).

21 9. I respectfully submit that the proposed settlement in the Action is fair and reasonable
22 in light of the following factors, among others: (a) any settlement, including the proposed settlement
23 in the Action, should take into consideration the time, inconvenience and uncertainty of trial that are
24 avoided by the settlement; (b) under Labor Code §2699(i), the aggrieved employees are entitled to
25 receive only 25% of any PAGA settlement with the remaining 75% to be paid to the LWDA; and
26 (c) Plaintiff contends that the penalties recoverable with regard to her PAGA claims as outlined
27 below are not substantially greater than the gross settlement amount of the proposed settlement
28 (\$3,000).

10. I am informed that Defendants do not concur or assent to the factual allegations underlying Plaintiff's claimed civil penalties or the calculations of such penalties described below.

11. Plaintiff estimates that the civil penalties recoverable with regard to the primary PAGA claims on behalf of herself (i.e., GKI's alleged failures to pay her all wages due and owing, to pay her meal period premiums, to pay her rest period premiums) is approximately \$4,950 calculated as follows:

Nature of Claim	Type Of Claim	Amount	Description
PAGA Claim o/b/o Ms. Garcia	PAGA Penalty For Unpaid Wages (Per Pay Period Penalty)	\$1,650	\$50 for the initial pay period + \$100 for each of the subsequent 16 pay periods = \$1,650 (25% payable to Ms. Garcia and 75% payable to the LWDA)
PAGA Claim o/b/o Ms. Garcia	PAGA Penalty For Meal Period Violations	\$1,650	\$50 for the initial pay period + \$100 for each of the subsequent 16 pay periods = \$1,650 (25% payable to Ms. Garcia and 75% payable to the LWDA)
PAGA Claim o/b/o Ms. Garcia	PAGA Penalty For Rest Period Violations	\$1,650	\$50 for the initial pay period + \$100 for each of the subsequent 16 pay periods = \$1,650 (25% payable to Ms. Garcia and 75% payable to the LWDA)
Total PAGA Penalties Recoverable o/b/o Ms. Garcia		\$4,950	

Plaintiff further estimates that the civil penalties recoverable with regard to the primary PAGA claims on behalf of the other 3 aggrieved employees (i.e., GKI's alleged failures to pay them all wages due and owing, to pay them meal period premiums, to pay them rest period premiums) is approximately \$7,425 calculated as follows: \$2,475 (50% of \$4,950) per aggrieved employee X 3 aggrieved employees = \$7,425. This calculation is based in part on Plaintiff's contention that, relative to the other 3 aggrieved employees, she performed the vast majority of the housekeeping and/or janitorial services at the Good Knight Inn Motel during the relevant time period.

12. For settlement purposes, it is reasonable to discount Plaintiff's estimate of the civil penalties potentially recoverable with regard to the primary PAGA claims at issue (\$12,375) by 50% to reflect the benefits of avoiding the delays associated with continued litigation and by another 50% to reflect the uncertainty of obtaining a favorable verdict at trial. Moreover, for settlement purposes, it is reasonable to discount the resulting figure after the aforementioned

discounts (\$3,093.75) to \$3,000 given the Court's wide discretion to reduce the civil penalties potentially recoverable by Plaintiff with regard to her PAGA claims.

13. I have submitted copies of Plaintiff's Ex Parte Application and all related papers to the LWDA (via online filing with the LWDA) contemporaneously with the filing of those papers. I do not anticipate receiving any objection or other communication from the LWDA regarding the relief requested in Plaintiff's Ex Parte Application. I will advise the Court whether I have received any such objection or other communication from the LWDA during the hearing on Plaintiff's Ex Parte Application.

14. I respectfully submit that Plaintiff's Ex Parte Application is warranted in light of the following factors, among others: (1) the parties are prepared to consummate the aforementioned settlement immediately after the Court approves of the settlement of Plaintiff's PAGA claims against the Defendants and dismisses Plaintiff's individual PAGA claims against the Defendants with prejudice; (2) there is no just reason to delay the consummation of the aforementioned settlement, particularly in light of significant health and financial difficulties that Plaintiff has been experiencing recently; and (3) given the congestion in the Court's calendar, Plaintiff anticipates an undue delay if this matter were heard on a regularly noticed motion.

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

1 16. The following factors, among others, support the conclusion that the proposed
2 dismissal described herein will not prejudice any of the other aggrieved employees: (a) the
3 *Baumann, O'Connor* and *Ochoa-Hernandez* cases cited above support the propositions that
4 unnamed aggrieved employees need not be given notice of the PAGA claim and have no right to
5 opt-out of the PAGA claim; and (b) I am unaware of any other aggrieved employees' reliance on
6 the Plaintiff to prosecute this representative action for his or her benefit.

7 17. The parties have executed a revised Confidential Settlement Agreement and Mutual
8 Release of All Claims ("Settlement Agreement") reflecting the settlements of Plaintiff's PAGA
9 claims against the Defendants as well as Plaintiff's individual non-PAGA claims against the
10 Defendants that are at issue in the Action. The parties have agreed to the disclosures herein of the
11 principal terms of the Settlement Agreement in order to assist the Court's evaluation of this matter
12 and the relief requested in this Ex Parte Application. Under the Settlement Agreement, Defendants
13 shall pay a Gross Settlement Amount of Fifteen Thousand Dollars (\$15,000) as follows: (a) Nine
14 Thousand Three Hundred Seventy Five Dollars (\$9,375) to Plaintiff (including his equal percentage
15 or *pro rata* share of One Hundred Eighty Seven Dollars and Fifty Cents [\$187.50] to be received by
16 each of the aggrieved employees in connection with the PAGA settlement); (b) Two Thousand Two
17 Hundred Fifty Dollars (\$2,250) to the LWDA in connection with the PAGA settlement; (c) Five
18 Hundred Sixty Two Dollars and Fifty Cents (\$562.50) to the other aggrieved employees in
19 connection with the PAGA settlement; and (d) Two Thousand Eight Hundred Twelve Dollars and
20 Fifty Cents (\$2,812.50) to Plaintiff's counsel's firm in connection with the settlement of Plaintiff's
21 individual non-PAGA claims against the Defendants. Upon receipt of notice of the Court's entry of
22 an Order granting the relief requested in Plaintiff's Ex Parte Application, Plaintiff's counsel will file
23 a Request for Dismissal of Plaintiff's individual non-PAGA claims against the Defendants (such
24 dismissal will be with prejudice pursuant to the terms of the Settlement Agreement).

25 18. The Settlement Agreement described above reflects certain revisions of the
26 settlement agreement described in Plaintiff's previously filed ex parte application and related
27 papers. Those revisions include, *inter alia*: (a) the amount of the PAGA settlement has been
28 increased from \$1,500 to \$3,000; (b) the beneficiaries of the PAGA settlement have been enlarged

1 to include all 4 aggrieved employees (not solely Plaintiff); and (c) the amount to be received by
2 Plaintiff's counsel in connection with the settlement of Plaintiff's individual non-PAGA claims has
3 been decreased from \$4,500 to \$2,812.50.

4 19. The Settlement Agreement requires Plaintiff to prepare and file this Ex Parte
5 Application and related papers and to seek the relief requested therein. Additionally, I have
6 provided Defendants' counsel with copies of this Ex Parte Application and related papers. Further,
7 I have been informed by Defendants' counsel that Defendants' counsel do not oppose the relief
8 requested herein.

9 I declare under penalty of perjury under the laws of California that the foregoing is true and
10 correct, and that this declaration was executed on February 2, 2022.

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13 Daniel V. Santiago
14 Attorney for Plaintiff, Kim D. Garcia
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