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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

**MEMORANDUM OF POINTS AND
AUTHORITIES 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

The Plaintiff, Kim D. Garcia, by and through her undersigned counsel, respectfully submits
this Memorandum of Points and Authorities in support of her Ex Parte Application for an Order: (1)
approving the settlement of her PAGA claims against the Defendants, Good Knight Inn,
Corporation ("GKI") and Dipankar Roy; (2) dismissing Plaintiff's PAGA claims against the
Defendants with prejudice.

I. SUMMARY OF THE CLAIMS AT ISSUE

Plaintiff's Individual and Representative Action Complaint against the Defendants alleges
various claims (individually and as representative of the State of California on behalf of herself and
all aggrieved employees of GKI under the Private Attorneys General Act of 2004 ["PAGA"],

1 California Labor Code ["Labor Code"] §2698 et seq.) arising from alleged violations of the Labor
2 Code and Industrial Welfare Commission ("IWC") Wage Order No. 5-2001. (Declaration of Daniel
3 V. Santiago ["DVS Decl."] filed under separate cover, ¶3). As used in Plaintiff's Complaint, the
4 term "aggrieved employees" consists of all California residents who worked for GKI as
5 housekeepers and/or janitors at the Good Knight Inn Motel in North Hills, California, at any time
6 within one year preceding the filing of the Complaint in this action up to and through the time of
7 trial (hereinafter referred to as "the liability period"). There are 4 aggrieved employees (Plaintiff
8 and three other persons) according to GKI's Responses to Plaintiff's First Set of Special
9 Interrogatories. (DVS Decl., ¶3).

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

23 **II. STATUS OF THE LITIGATION**

24 On August 31, 2020, Plaintiff filed her Complaint against the Defendants asserting, *inter*
25 *alia*, the various causes of action listed above. (DVS Decl., ¶5). Defendants have filed a general
26 denial of the material allegations in Plaintiff's Complaint and asserted various affirmative defenses.
27 (DVS Decl., ¶5).

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

6 **III. PROPOSED SETTLEMENT OF PLAINTIFF'S PAGA CLAIMS**

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

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

18 The proposed settlement in this action is fair and reasonable in light of the following factors,
19 among others: (a) any settlement, including the proposed settlement in this action, should take into
20 consideration the time, inconvenience and uncertainty of trial that are avoided by the settlement; (b)
21 under Labor Code §2699(i), the aggrieved employees are entitled to receive only 25% of any PAGA
22 settlement with the remaining 75% to be paid to the LWDA; and (c) Plaintiff contends that the civil
23 penalties recoverable with regard to her PAGA claims and a reasonable evaluation of such penalties
24 for settlement purposes are not substantially greater than the gross settlement amount of the
25 proposed settlement (\$3,000). (DVS Decl., ¶¶9-12).¹

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27 ¹Defendants do not concur or assent to the factual allegations underlying Plaintiff's claimed civil penalties or
28 the calculations of such penalties. (DVS Decl., ¶10).

1 **IV. PLAINTIFF REQUESTS THE COURT'S APPROVAL OF THE PROPOSED**
2 **SETTLEMENT OF HER PAGA CLAIMS, AS REQUIRED.**

3 Plaintiff requests the Court's approval of the proposed settlement of her PAGA claims
4 against the Defendants in accordance with Labor Code §2699(l)(2) which requires Court approval
5 for every PAGA settlement.² Labor Code §2699(l)(2) further requires that the proposed PAGA
6 settlement be submitted to the LWDA at the same time that it is submitted to the Court.
7 Accordingly, Plaintiff has submitted copies of her Notice of Plaintiff's Ex Parte Application and
8 related papers to the LWDA (via online filing with the LWDA) contemporaneously with the filing
9 of those papers. (DVS Decl., ¶13). Plaintiff's counsel does not anticipate receiving any objection
10 or other communication from the LWDA regarding the relief requested herein. (DVS Decl., ¶13).
11 Plaintiff's counsel will advise the Court whether he has received any such objection or other
12 communication from the LWDA during the hearing on this Ex Parte Application. (DVS Decl.,
13 ¶13).

14 **V. NECESSITY FOR EX PARTE APPLICATION**

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

23 Of note, notice to the other aggrieved employees of the proposed dismissals described herein
24 is not required because, among other reasons, this is not a putative class action, notice of this
25 representative action has not been required to be provided to (and has not been provided to) the
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27 ² Labor Code §2699(l)(2) provides that "[t]he superior court shall review and approve any settlement of any
28 civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same
time that it is submitted to the court."

1 other aggrieved employees, and the proposed dismissal described herein will not prejudice any of
2 the other aggrieved employees. (DVS Decl., ¶15). *See, e.g., Baumann v. Chase Inv. Servs. Corp.*,
3 747 F.3d 1117, 1122 (9th Cir. 2014) (“PAGA has no notice requirements for unnamed aggrieved
4 employees, nor may such employees opt out of a PAGA action); *O’Connor v. Uber Techs., Inc.*,
5 201 F. Supp. 3d 1110, 1134 (N.D. Cal. 2016) (“PAGA does not require class actions procedures,
6 such as notice and opt-out rights.”); and *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL
7 134077, at *5 (N.D. Cal. Apr. 2, 2010) (“Unnamed employees need not be given notice of the
8 PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.”)

9 The following factors, among others, support the conclusion that the proposed dismissal
10 described herein will not prejudice any of the other aggrieved employees: (a) the *Baumann*,
11 *O’Connor* and *Ochoa-Hernandez* cases cited above support the propositions that unnamed
12 aggrieved employees need not be given notice of the PAGA claim and have no right to opt-out of
13 the PAGA claim; and (b) Plaintiff’s counsel is unaware of any other aggrieved employees’ reliance
14 on the Plaintiff to prosecute this representative action for his or her benefit. (DVS Decl., ¶16).

15 **VI. THE PARTIES’ CONFIDENTIAL SETTLEMENT AGREEMENT AND MUTUAL** 16 **RELEASE OF ALL CLAIMS**

17 The parties have executed a Confidential Settlement Agreement and Mutual Release of All
18 Claims (“Settlement Agreement”) reflecting the settlements of Plaintiff’s PAGA claims against the
19 Defendants as well as Plaintiff’s individual non-PAGA claims against the Defendants that are at
20 issue in the Action. (DVS Decl., ¶17). The parties have agreed to the disclosures herein of the
21 principal terms of the Settlement Agreement in order to assist the Court’s evaluation of this matter
22 and the relief requested in this Ex Parte Application. (DVS Decl., ¶17).

23 Under the Settlement Agreement, Defendants shall pay a Gross Settlement Amount of
24 Fifteen Thousand Dollars (\$15,000) as follows: (a) Nine Thousand Three Hundred Seventy Five
25 Dollars (\$9,375) to Plaintiff (including his equal percentage or *pro rata* share of One Hundred
26 Eighty Seven Dollars and Fifty Cents [\$187.50] to be received by each of the aggrieved employees
27 in connection with the PAGA settlement); (b) Two Thousand Two Hundred Fifty Dollars (\$2,250)
28 to the LWDA in connection with the PAGA settlement; (c) Five Hundred Sixty Two Dollars and

1 Fifty Cents (\$562.50) to the other aggrieved employees in connection with the PAGA settlement;
2 and (d) Two Thousand Eight Hundred Twelve Dollars and Fifty Cents (\$2,812.50) to Plaintiff's
3 counsel's firm in connection with the settlement of Plaintiff's individual non-PAGA claims against
4 the Defendants. (DVS Decl., ¶17). Upon receipt of notice of the Court's entry of an Order granting
5 the relief requested in this Ex Parte Application, Plaintiff's counsel will file a Request for Dismissal
6 of Plaintiff's individual non-PAGA claims against the Defendants (such dismissal will be with
7 prejudice pursuant to the terms of the Settlement Agreement). (DVS Decl., ¶17).³

8 VII. REQUESTED RELIEF

9 For the foregoing reasons, Plaintiff respectfully requests that the Court enter an Order: (1)
10 approving the settlement of Plaintiff's PAGA claims against the Defendants in the total amount of
11 Three Thousand Dollars (\$3,000) and the corresponding payments of Two Thousand Two Hundred
12 Fifty Dollars (\$2,250) to the LWDA and One Hundred Eight Seven Dollars and Fifty Cents
13 (\$187.50) to each of the 4 aggrieved employees (Plaintiff and the other 3 aggrieved employees
14 identified in GKI's Responses to Plaintiff's First Set of Special Interrogatories); (2) dismissing
15 Plaintiff's PAGA claims against the Defendants with prejudice; and (3) granting such additional
16 relief as the Court deems just and appropriate. Plaintiff respectfully files under separate cover a
17 [Proposed] Order reflecting the relief requested herein.

18 Plaintiff's counsel has provided Defendants' counsel with copies of this Ex Parte
19 Application and related papers, and Plaintiff's counsel has been informed by Defendants' counsel
20 that Defendants' counsel do not oppose the relief requested herein. (DVS Decl., ¶19).

21 Dated: February 2, 2022

LAW OFFICES OF DANIEL V. SANTIAGO, P.C.

22 By: 

23 Daniel V. Santiago, Esq.

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26 ³ The Settlement Agreement described above reflects certain revisions of the settlement agreement described
27 in Plaintiff's previously filed ex parte application and related papers. Those revisions include, *inter alia*: (a)
28 the amount of the PAGA settlement has been increased from \$1,500 to \$3,000; (b) the beneficiaries of the
PAGA settlement have been enlarged to include all 4 aggrieved employees (not solely Plaintiff); and (c) the
amount to be received by Plaintiff's counsel in connection with the settlement of Plaintiff's individual non-
PAGA claims has been decreased from \$4,500 to \$2,812.50. (DVS Decl., ¶18).