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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
POMONA COURTHOUSE SOUTH**

GINA T. DELGADO, individually and as
representative of the State of California on
behalf of herself and all aggrieved employees,

Plaintiff,

v.

NG-27 PATAN, INC., a California corporation,
GOVIND BHAI PRAJAPATI, an individual,
and DOES 1 through 20, inclusive,

Defendants.

Case No. 20PSCV00572

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

Judge: Honorable Gloria White-Brown
Department: J
Complaint Filed: August 28, 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, Gina T. Delgado, in the above-captioned representative action against the Defendants, NG-27 Patan, Inc. and Govind Bhai Prajapati, currently pending before the Honorable Judge Gloria White-Brown in the Los Angeles Superior Court, Pomona Courthouse South, Case No. 20PSCV00572 ("the Action").

2. I respectfully submit this declaration in support of Plaintiff's Ex Parte Application for an Order: (1) approving the settlement of Plaintiff's individual PAGA claims against the

1 Defendants; and (2) dismissing those PAGA claims with prejudice (“Plaintiff’s Ex Parte
2 Application”).

3 3. Plaintiff brings this representative action against Defendants under the Private
4 Attorneys General Act of 2004 (“PAGA”), California Labor Code (“Labor Code”) §2698 et seq., as
5 representative of the State of California on behalf of himself and all aggrieved employees of
6 Defendant. As used in Plaintiff’s Complaint, the term “aggrieved employees” consists of all
7 California residents employed by Defendant NG-27 Patan, Inc. at any time within one year
8 preceding the filing of Plaintiff’s Complaint up to and through the time of trial for this matter.
9 Plaintiff is informed and believes there are approximately 5 aggrieved employees, as defined.

10 4. By this representative action, Plaintiff seeks recovery of civil penalties arising from
11 Defendants’ alleged: failures to pay all wages due and owing in violation of Labor Code §§204(a),
12 510(a), 1194(a) and 1197 (Sixth Cause of Action); failures to furnish accurate itemized wage
13 statements in violation of Labor Code §226(a) (Seventh Cause of Action); failures to provide meal
14 periods under Labor Code §512(a) and IWC Wage Order No. 7-2001, §11(A) and to pay meal
15 period premiums in violation of Labor Code §226.7(c) and IWC Wage Order No. 7-2001, §11(D)
16 (Eighth Cause of Action); failures to authorize and permit rest periods under IWC Wage Order No.
17 7-2001, §12(A), and to pay rest period premiums in violation of IWC Wage Order No. 7-2001,
18 §12(B) and Labor Code §226.7(c) (Ninth Cause of Action); failures to timely pay all wages due
19 upon termination of employment in violation of Labor Code §§201-203 (Tenth Cause of Action);
20 and whistleblower retaliation in violation of Labor Code §1102.5(b) (Eleventh Cause of Action).
21 (DVS Decl., ¶4).

22 5. On August 28, 2020, Plaintiff filed her Complaint against the Defendants asserting,
23 *inter alia*, the various causes of action listed above.

24 6. Defendants deny any liability and further deny any wrongdoing of any kind.

25 7. The Initial Case Management Conference is set for January 25, 2021.

26 8. No trial date is currently set.

27 9. The parties recently agreed to settle the Plaintiff’s individual PAGA claims against
28 the Defendants at issue in this action for One Thousand Two Hundred Fifty Dollars (\$1,250) subject

1 to the Court's entry of an Order: (a) approving of the settlement of Plaintiff's individual PAGA
2 claims; (b) dismissing Plaintiff's individual PAGA claims with prejudice; and (c) dismissing
3 Plaintiff's PAGA claims on behalf of other aggrieved employees without prejudice.

4 10. The proposed settlement of Plaintiff's individual PAGA claims against the
5 Defendants calls for the following payments: (a) Seven Hundred Fifty Dollars (\$750) to the Labor
6 and Workforce Development Agency ("LWDA") (which reflects 75% of the settlement amount not
7 attributable to attorney's fees in accordance with Labor Code §2699(i)); (b) Two Hundred Fifty
8 Dollars (\$250) to the Plaintiff (which reflects 25% of the settlement amount not attributable to
9 attorney's fees in accordance with Labor Code §2699(i)); and (c) Two Hundred Fifty Dollars (\$250)
10 to the Law Offices of Daniel V. Santiago, P.C. which reflects one-fifth of the gross settlement
11 amount and compensation for a portion of the attorney's fees and costs incurred by Plaintiff's
12 counsel in the prosecution of Plaintiff's individual PAGA claims against the Defendants.

13 11. I respectfully submit that the proposed settlement in the Action is fair and reasonable
14 in light of the following factors, among others: (a) any settlement, including the proposed settlement
15 in the Action, should take into consideration the time, inconvenience and uncertainty of trial that are
16 avoided by the settlement; (b) under Labor Code §2699(i), the aggrieved employees are entitled to
17 receive only 25% of any PAGA settlement with the remaining 75% to be paid to the LWDA; and
18 (c) Plaintiff contends that the penalties recoverable by her with regard to her individual PAGA
19 claims as outlined below, and a reasonable evaluation of such penalties for settlement purposes as
20 outlined below, are not substantially greater than the gross settlement amount of the proposed
21 settlement (\$1,250) or the sum of the LWDA's and Plaintiff's shares of the proposed settlement
22 (\$1,000).

23 12. I am informed that Defendants do not concur or assent to the factual allegations
24 underlying Plaintiff's claimed civil penalties, the amounts of such penalties, or the calculations of
25 such penalties described below.

26 13. Plaintiff estimates that the civil penalties recoverable by her with regard to her
27 individual PAGA claims is approximately \$7,800 calculated as follows:
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Nature of Claim	Type Of Claim	Amount	Description
PAGA Claim on Behalf of Ms. Delgado	PAGA Penalty For Unpaid Wages (Per Pay Period Penalty)	\$1,450	\$50 for the initial pay period + \$100 for each of the subsequent 14 pay periods ¹ = \$1,450 (25% payable to Ms. Delgado and 75% payable to the LWDA under PAGA)
PAGA Claim on Behalf of Ms. Delgado	PAGA Penalty For Itemized Wage Statement Violations ²	\$1,450	\$50 for the initial pay period + \$100 for each of the subsequent 14 pay periods = \$1,450 (25% payable to Ms. Delgado and 75% payable to the LWDA under PAGA)
PAGA Claim on Behalf of Ms. Delgado	PAGA Penalty For Meal Period Violations	\$1,450	\$50 for the initial pay period + \$100 for each of the subsequent 14 pay periods = \$1,450 (25% payable to Ms. Delgado and 75% payable to the LWDA under PAGA)
PAGA Claim on Behalf of Ms. Delgado	PAGA Penalty For Rest Period Violations	\$1,450	\$50 for the initial pay period + \$100 for each of the subsequent 14 pay periods = \$1,450 (25% payable to Ms. Delgado and 75% payable to the LWDA under PAGA)
PAGA Claim on Behalf of Ms. Delgado	PAGA Penalty For Whistleblower Retaliation	\$2,000 ³	Labor Code §1102.5(f) provides: "In addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section."
Total		\$7,800	

¹ Plaintiff's employment by NG-27 Patan, Inc. began in or around August / September 2019. She is still employed by NG-27 Patan, Inc. She contends that, for at least the first 3+ months of her employment and the first 4+ months of the Covid-19 pandemic, she did not receive: (a) any overtime for working seven consecutive days of work in a workweek throughout those time periods; (b) wage statements that accurately itemized her gross and net wages earned throughout those time periods; (c) legally requisite meal periods; and (d) legally requisite rest periods. She was paid on a bi-weekly basis throughout those time periods. Accordingly, it is reasonable to estimate that there are at least 15 pay periods for which she can recover PAGA penalties.

² Labor Code §226(e)(1), which sets forth elements of a private cause of action for an employer's knowing and intentional violation of itemized wage statement requirements, permits the recovery of statutory damages rather than a civil penalty. As a result, the "knowing and intentional requirement" is not applicable to a claim under PAGA for recovery of civil penalties based on violation of itemized wage statement requirements. *Lopez v. Friant & Associates, LLC*, 15 Cal. App. 5th 773, 784-785 (2018).

³ This estimate is reasonable in light of the following factors, among others: (1) Plaintiff's claim for whistleblower retaliation is primarily based upon her allegation that Defendant NG-27 Patan, Inc. reduced her days and hours worked shortly after she submitted her initial settlement demand on or about July 31, 2020; (2) Defendant NG-27 Patan, Inc. restored the number of her days and hours worked on or about September 27, 2020, while settlement discussions between the parties' counsel were ongoing; and (3) Plaintiff's alleged lost wages relevant to her claim for whistleblower retaliation are less than \$2,500 given the

1 14. For settlement purposes, it is reasonable to discount Plaintiff's estimate of the civil
2 penalties potentially recoverable by her with regard to her individual PAGA claims (\$7,800) by
3 50% to reflect the benefits of avoiding the delays associated with continued litigation and by
4 another 50% to reflect the uncertainty of obtaining a favorable verdict at trial. Moreover, for
5 settlement purposes, it is reasonable to discount the resulting figure after the aforementioned
6 discounts (\$1,950) to \$1,250 or lower given the Court's wide discretion to reduce the civil penalties
7 potentially recoverable by Plaintiff with regard to her individual PAGA claims.

8 15. The total amount of the attorney's fees to be received by my law firm in connection
9 with the settlement of Plaintiff's individual PAGA claims at issue in the Action reflects a very small
10 percentage of the reasonable value of my legal services with regard to Plaintiff's claims. To date, I
11 have invested more than 40 hours in the prosecution of Plaintiff's individual PAGA claims at issue
12 in the Action. My hourly rate is \$375 per hour.

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

19 17. I respectfully submit that Plaintiff's Ex Parte Application is warranted in light of the
20 following factors, among others: (1) the parties are prepared to consummate the aforementioned
21 settlement immediately after the Court approves of the settlement of Plaintiff's individual PAGA
22 claims against the Defendants, dismisses Plaintiff's individual PAGA claims against the Defendants
23 with prejudice, and dismisses Plaintiff's PAGA claims against the Defendants on behalf of other
24 aggrieved employees without prejudice; (2) there is no just reason to delay the consummation of the
25 aforementioned settlement; and (3) given the congestion in the Court's calendar, Plaintiff
26 anticipates an undue delay if this matter were heard on a regularly noticed motion.

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aforementioned restoration of her days and hours worked.

18. 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 dismissals 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.”)

19. The following factors, among others, support the conclusion that the proposed dismissals described herein will not prejudice any of the other aggrieved employees: (a) the *Baumann*, *O’Connor* and *Ochoa-Hernandez* cases cited above, among other cases, support the propositions that unnamed aggrieved employees need not be given notice of the PAGA claim, and they do not have the right to opt-out of the PAGA claim; (b) I am unaware of any other aggrieved employees’ reliance on the Plaintiff to prosecute this representative action for his or her benefit; and (c) I am unaware of any factor that prevents any other aggrieved employee from pursuing individual claims against the Defendants, or either of them, if he or she elects to do so.

20. The parties have agreed to the final language of the Confidential Settlement Agreement and Mutual Release of All Claims reflecting the settlements of Plaintiff’s individual non-PAGA claims against the Defendants that are at issue in the Action as well as Plaintiff’s individual PAGA claims against the Defendants that are at issue in the Action.

21. On October 21, 2020, I emailed Andrew H. Covner, Esq. of Norman Dowler, LLP in Ventura, California (Defendants’ attorney) drafts of Plaintiff’s Ex Parte Application and all related papers and advised him that I intended to schedule the hearing on Plaintiff’s Ex Parte Application on November 2, 2020, at 9:00 a.m. in Department J of the Los Angeles Superior Court, Pomona Courthouse South. Later on October 21, 2020, Mr. Covner informed me via email that he does not

1 ~~oppose the relief requested in Plaintiff's Ex Parte Application or the scheduling of the hearing on~~
2 this Ex Parte Application on November 2, 2020, at 9:00 a.m. in Department J of the Los Angeles
3 Superior Court, Pomona Courthouse South.

4 I declare under penalty of perjury under the laws of California that the foregoing is true and
5 correct, and that this declaration was executed on October 22, 2020.

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7 Daniel V. Santiago
8 Attorney for Plaintiff, Gina T. Delgado
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