

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, Gina T. Delgado

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**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

**MEMORANDUM OF POINTS AND
AUTHORITIES 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

The Plaintiff, Gina T. Delgado, 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 individual claims against the Defendants, NG-27 Patan,
Inc. and Govind Bhai Prajapati, under the Private Attorneys General Act of 2004 ("PAGA"),
California Labor Code ("Labor Code") §2698 et seq.; (2) dismissing Plaintiff's individual PAGA
claims against the Defendants *with* prejudice; and (3) dismissing Plaintiff's PAGA claims against
the Defendants on behalf of other aggrieved employees *without* prejudice.

1 **I. SUMMARY OF THE CLAIMS AT ISSUE**

2 Plaintiff’s Individual and Representative Action Complaint against the Defendants alleges
3 various claims (individually and as representative of the State of California on behalf of herself and
4 all aggrieved employees under the Private Attorneys General Act of 2004 [“PAGA”], Labor Code
5 §2698 et seq.) arising from Defendants’ alleged violations of the Labor Code and Industrial Welfare
6 Commission (“IWC”) Wage Order No. 7-2001. (Declaration of Daniel V. Santiago [“DVS Decl.”]
7 filed under separate cover, ¶3). As used in Plaintiff’s Complaint, the term “aggrieved employees”
8 consists of all California residents employed by Defendant NG-27 Patan, Inc. at any time within one
9 year preceding the filing of Plaintiff’s Complaint up to and through the time of trial for this matter.
10 Plaintiff is informed and believes there are approximately 5 aggrieved employees, as defined.
11 (DVS Decl., ¶3).

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

24 **II. STATUS OF THE LITIGATION**

25 On August 28, 2020, Plaintiff filed her Complaint against the Defendants asserting, *inter*
26 *alia*, the various causes of action listed above. (DVS Decl., ¶5). Defendants deny any liability and
27 further deny any wrongdoing of any kind. (DVS Decl., ¶6). The Initial Case Management
28

1 Conference is set for January 25, 2021. (DVS Decl., ¶7). No trial date is currently set. (DVS
2 Decl., ¶8).

3 **III. PROPOSED SETTLEMENT OF PLAINTIFF'S INDIVIDUAL PAGA CLAIMS**

4 The parties recently agreed to settle the Plaintiff's individual PAGA claims against the
5 Defendants at issue in this action for One Thousand Dollars (\$1,250) subject to the Court's entry of
6 an Order: (a) approving of the settlement of Plaintiff's individual PAGA claims; (b) dismissing
7 Plaintiff's individual PAGA claims with prejudice; and (c) dismissing Plaintiff's PAGA claims on
8 behalf of other aggrieved employees without prejudice. (DVS Decl., ¶9).

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

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 individual PAGA claims, and a reasonable evaluation of
24 such penalties for settlement purposes as outlined in the DVS Decl. at ¶¶13-14, are not substantially
25 greater than the gross settlement amount of the proposed settlement (\$1,250) or the sum of the
26 LWDA's and Plaintiff's shares of the proposed settlement (\$1,000). (DVS Decl., ¶11).¹

27 _____
28 ¹Defendants do not concur or assent to the factual allegations underlying Plaintiff's claimed civil penalties,
the amounts of such penalties, or the calculations of such penalties. (DVS Decl., ¶12).

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

3 Plaintiff requests the Court’s approval of the proposed settlement of her individual PAGA
4 claims against the Defendants in accordance with Labor Code §2699(1)(2) which requires Court
5 approval for every PAGA settlement.² Labor Code §2699(1)(2) further requires that the proposed
6 PAGA settlement be submitted to the Labor and Workforce Development Agency (“LWDA”) at the
7 same time that it is submitted to the Court. Accordingly, Plaintiff has submitted copies of her
8 Notice of Plaintiff’s Ex Parte Application and related papers to the LWDA (via online filing with
9 the LWDA) contemporaneously with the filing of those papers. (DVS Decl., ¶16). Plaintiff’s
10 counsel does not anticipate receiving any objection or other communication from the LWDA
11 regarding the relief requested herein. (DVS Decl., ¶16). Plaintiff’s counsel will advise the Court
12 whether he has received any such objection or other communication from the LWDA during the
13 hearing on this Ex Parte Application. (DVS Decl., ¶16).

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 individual PAGA
18 claims against the Defendants, dismisses Plaintiff’s individual PAGA claims with prejudice, and
19 dismisses Plaintiff’s PAGA claims on behalf of other aggrieved employees without prejudice; (2)
20 there is no just reason to delay the consummation of the aforementioned settlement; and (3) given
21 the congestion in the Court’s calendar, Plaintiffs anticipate an undue delay if this matter were heard
22 on a regularly noticed motion. (DVS Decl., ¶17).

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
26
27
28

1 other aggrieved employees, and the proposed dismissals described herein will not prejudice any of
2 the other aggrieved employees. (DVS Decl., ¶18). *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 dismissals
10 described herein will not prejudice any of the other aggrieved employees: (a) the *Baumann*,
11 *O’Connor* and *Ochoa-Hernandez* cases cited above, among other cases, support the propositions
12 that unnamed aggrieved employees need not be given notice of the PAGA claim, and they do not
13 have the right to opt-out of the PAGA claim; (b) Plaintiff’s counsel is unaware of any other
14 aggrieved employees’ reliance on the Plaintiff to prosecute this representative action for his or her
15 benefit; and (c) Plaintiff’s counsel is unaware of any factor that prevents any other aggrieved
16 employee from pursuing individual claims against the Defendants, or either of them, if he or she
17 elects to do so. (DVS Decl., ¶19).

18 VI. REQUESTED RELIEF

19 For the foregoing reasons, Plaintiff respectfully requests that the Court enter an Order: (1)
20 approving the settlement of Plaintiff’s individual PAGA claims against the Defendants and the
21 corresponding payments of (a) \$750 to the LWDA, (b) \$250 to Plaintiff, and (c) \$250 to Plaintiff’s
22 counsel which reflects payment of a portion of the attorney’s fees and costs incurred by Plaintiff’s
23 counsel in the prosecution of Plaintiffs’ individual PAGA claims against the Defendants; (2)
24 dismissing Plaintiff’s individual PAGA claims against the Defendants *with* prejudice; (3) dismissing
25 Plaintiff’s PAGA claims against the Defendants on behalf of other aggrieved employees *without*

26
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 prejudice; and (4) granting such additional relief as the Court deems just and appropriate. Plaintiff
2 respectfully files under separate cover a [Proposed] Order reflecting the relief requested herein.
3 Notably, Defendants' counsel has informed Plaintiff's counsel that Defendants' counsel does not
4 oppose the relief requested herein or the scheduling of the hearing on this Ex Parte Application.
5 (DVS Decl., ¶21).

6 Dated: October 22, 2020

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

7 By:



8 Daniel V. Santiago, Esq.