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Attorney for Plaintiff, Lizbeth Garcia

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION

LIZBETH GARCIA

Plaintiff,

v.

**THE BAY CLUBS COMPANY, LLC;
and DOES 1 through 50, inclusive,**

Defendant(s).

) CASE NO.: 37-2018-00029247- CU-OE-CTL

)

) **DECLARATION OF DEVON K. ROEPCKE IN**

) **SUPPORT OF AGGRIEVED PARTIES’**

) **UNOPPOSED MOTION FOR PAGA**

) **SETTLEMENT APPROVAL**

)

) Date: February 8, 2022

) Time: 8:30 a.m.

) Dept.: C-71

) Judge: Hon. Gregory W. Pollack

)

) Action Filed: June 13, 2018

) Trial Date: January 14, 2022

1 I, Devon Roepcke, declare as follows:

2 1. I am a principal with the law firm Devon K. Roepcke, PC duly admitted to practice
3 before all the Courts of the State of California, and am attorney of record herein for plaintiff,
4 Lizbeth Garcia. I make this declaration from my personal knowledge except as to those matters, if
5 any, stated on information and belief, and if called as a witness, I could and would competently
6 testify thereto.

7 2. I am also the attorney of record for Allyson Klipa in the case of *Allyson Klipa v.*
8 *The Bay Clubs Company, LLC, San Francisco Superior Court (Case No.: CGC-20-587892).*

9
10 **INVESTIGATION AND ANALYSIS OF CLAIMS AMONG THE ACTIONS**

11 3. My firm was retained by Ms. Garcia in September of 2017. Thereafter, I
12 investigated her various claims against Defendant, The Bay Clubs Company, LLC (“Defendant”).

13 4. On or about April 9, 2018, my firm submitted a letter to the LWDA and Defendant
14 outlining various Labor Code violations against Defendant, including not listing the correct legal
15 entity of the employer, and failure to pay its non-exempt employees legally mandated meal period
16 premiums.

17 5. On June 13, 2018, Ms. Garcia filed the present action PAGA only action against
18 Defendant, asserting claims for failure to provide meal periods and furnishing inaccurate wage
19 statements (the “*Garcia Action*”). Thereafter, the parties vigorously litigated this case.

20 6. The *Garcia Action* was extremely active. The parties in the *Garcia Action* were in
21 court on a regular basis. For instance, Defendants were not responding to discovery and ignoring
22 deposition notices, which forced Plaintiff to expend time and resources to file motions and *ex*
23 *parte* applications to try to obtain their compliance. Sometimes, Defendants would not even
24 comply with court orders, forcing Plaintiff to expend even more time drafting and filing motions
25 in an attempt to make Defendants comply.

26 7. In total, there are 196 separate entries on the Register of Actions. Plaintiff had to
27 file four discovery, and initiated five informal discovery conferences to obtain necessary
28 discovery.

1 8. Plaintiff Garcia propounded three sets of interrogatories, and three sets of Requests
2 for Production of Documents, one set of Requests for Admission. All the discovery Plaintiff
3 propounded required lengthy meet and confer efforts, and nearly everything in this action required
4 court intervention via motion practice or informal discovery conference.

5 9. Defendants propounded upon Garcia one set of Requests for Production of
6 Documents, and two sets of interrogatories.

7 10. Plaintiff noticed the deposition of Defendant's Person Most Qualified ("PMQ") *ten*
8 *times*, starting in September of 2019, resulting in two non-appearances, three cancellations by
9 Defendant just days before the deposition, and one deposition that went forward but Defendant cut
10 short, forcing further unsuccessful attempts to reschedule, before Plaintiff was finally able to
11 completed the deposition on February 12, 2021.

12 11. Plaintiff Garcia's deposition was taken.

13 12. Approximately 52,630 documents, including (without limitation) Defendants'
14 Employee Handbook, and other employment policies and procedures, time records, company
15 emails, and wage statements were exchanged during discovery. Additionally, Defendant produced
16 information about number of Aggrieved Employees, the number of pay periods during the PAGA
17 period

18 13. We also interviewed dozens of aggrieved employees, and filed twenty-three
19 different individual arbitration complaints on behalf of some of the aggrieved employees regarding
20 overlapping Labor Code claims. Interviewing and filing the aforementioned individual
21 arbitrations further helped our firm's understanding of the inner workings of Defendant's clubs.

22 14. In order to properly value Plaintiff's claims, the Parties agreed that Defendant
23 would produce the time and pay records 15% of the PAGA class selected at random (the "Sample
24 Group"). Approximately 32,000 pages of time and pay records for the Sample Group were
25 produced.

26 15. Plaintiff contracted with IST Management to convert the time records to a database
27 readable format. The result was a spreadsheet containing 4,758,062 separate datapoints.

28 16. Plaintiff retained Dr. Robert Fountain, Ph.D. ("Fountain") to analyze the employee
data for the Sample Group. Fountain, among other things, analyzed and evaluated claims related

1 to meal period compliance. At Plaintiff's counsel's direction, Fountain ran different algorithms
2 and programs to come up with various damage models in preparation for mediation and trial.

3 17. The Garcia Action was set for trial on January 14, 2022. Plaintiff was preparing to
4 try this case when the parties reached the present settlement.

5 **KLIPA ACTION**

6 18. After receiving notice of the Garcia matter through the Belaire-West notice,
7 Allyson Klipa reached out to my office to learn more about the case. Klipa worked for Defendant
8 as a fitness instructor for several years. Throughout her employment, Klipa had to work before
9 and after the fitness classes she taught, without compensation. She was also required to purchase
10 the music and choreography for the classes she taught with her own money – Defendant did not
11 reimburse her for these expenses. When Klipa stopped working for Defendant, it failed to pay her
12 all wages she was owed.

13 19. On September 15, 2020, plaintiff Allyson Klipa sent a letter to the LWDA outlining
14 claims against the Defendant for failure to pay wages, failure to reimburse business expenses,
15 failure to provide accurate wage statements, and failure to pay all wages upon ending
16 employment.

17 20. On November 20, 2020, Klipa filed her civil complaint alleging a single cause of
18 action under for Remedies Under Private Attorneys General Act (PAGA California Labor Code §§
19 2698, 2699, et seq., and alleging the claims discussed in her letter to the LWDA.

20 21. Klipa served Defendant on January 29, 2021. Defendant's counsel requested an
21 extension, which Klipa granted, but when Defendant still did not file responsive pleadings after
22 the extended deadline expired, Klipa had no choice but to request that default be entered against
23 Defendant. Defendant was defaulted on March 23, 2021.

24 22. On June 18, 2021, the parties stipulated to set aside the default and allow
25 Defendant to appear and defend the case.

26 23. Klipa served Form Interrogatories, Special Interrogatories, Requests for
27 Admissions and Requests for Production. Defendants responded to the requests and served
28 approximately 300 pages of responsive documents.

**RELEVANT EXPERIENCE AND QUALIFICATIONS OF PAGA COUNSEL TO
REQUEST ATTORNEYS FEES AND COSTS**

24. I obtained my Juris Doctorate degree from the California Western School of Law in 2009, graduating near the top of my class.

25. I was admitted to the California State Bar in 2009. Since 2012, I have specialized in wage and hour class actions, litigating several wage and hour and PAGA class and representative actions.

26. About fifty percent of my area of practice is in the area of wage and hour class actions. Frequently, these cases have a PAGA component. The balance of my practice consists of a mix of wrongful termination and FEHA employment actions.

27. Although adequacy is not an issue for the Court to consider in a PAGA Action, I, and my co-counsel have considerable experience in litigating PAGA wage and hour class actions.

28. Since forming my firm, I have been consistently appointed Class or PAGA counsel. I have ever been denied Class or PAGA counsel.

29. The following are some, but not all, of the cases I have personally litigated as lead or co-lead counsel:

- a. *Rivera, et al. v. Grand Pacific Resort Services, et al.* (Case No. 37-2012-00086103-CU-OE-CTL) (Hon. Joel M. Pressman) – obtained wage and hour class action and PAGA settlement in the amount of \$1,686,000.00 settlement for a class of housekeepers staffed by a third-party contracting company.
- b. *Barber v. Chipotle Mexican Grill, Inc.* (Case Nos. 30-2016-00864261-CU-OE-CXC) – Putative class action alleging multiple wage and hour violations against a major restaurant chain. *Currently pending in the California Superior Court, Orange County;*
- c. *Noto, et al. v. INT Technologies, LLC, et al.* (Arizona District Court, Case No. CV-16-03322-PHX-DJH) - putative class action and FLSA Collective

Action alleging multiple wage and hour violations against a nationwide I.T. staffing company. *Class settlement approved on April 3, 2018;*

- d. *Mendez v. Allstate Security Services Inc.* (Case No. 37-2018-00017058-CU-OE-CTL) –) – obtained wage and hour class action and PAGA settlement in the amount of \$145,000.00 for a class of approximately 585 mostly part-time security guards;
- e. *Baranauskas v. Healthcare Management Services, et al.* (Case No. 37-2017-00013171-CU-OE-NC (Hon. Timothy M. Casserly) – obtained final approval for a wage and hour class action and PAGA settlement for \$3,100,000.00, with a \$650 hourly rate.

30. My firm financed this case with great risk. As explained above, a significant amount of work went into prosecuting this case with no guarantee of success. An important reason that I agreed to work on this case, with all its risks and expense was the expectation that if Plaintiff prevailed, the Court would recognize the risks and award attorneys' fees.

31. I personally receive several inquiries per month. My firm consists of myself and one law clerk. To the extent my firm does not have the time or resources to take a case, I attempt to refer these people in search of representation to other qualified attorneys. Due to the fact that the *Garcia* Action was being heavily litigated, I turned down several meritorious cases to enable me to devote time to the *Garcia* Action.

32. Although many appear to have meritorious cases, potential plaintiffs often cannot find competent representation on an affordable or wholly contingent fee basis. This hardship exists because attorneys know the great litigation expense of class and representative claims as such claims require large investments of attorney time as well as substantial out-of-pocket expenses. Due to the length of time before an attorney may recover fees and expenses, taking such a case can, and often does, have a substantial impact on a firm's earnings or even existence. In this case, three and a half years from the filing of this case before Plaintiff's counsel will be compensated.

33. My firm's practice is to keep contemporaneous records in increments of 6 minutes, or 0.1. California state court fee applications are based on *current* rates at *current* experience levels to account for the length in time the successful party's attorney has had to wait to receive the funds (i.e. for the lost use of the funds and for the effects of inflation). (*See, e.g., Graham v. Daimler-Chrysler Corp.* (2004) 34 Cal.4th 553, 583 (recognizing the delay in payment can be compensated by using historical rates with an enhancement or by using current rates); *Russell v. Foglio* (2008) 160 Cal.App.4th 653, 661; *See also In re Washington Public Power Supply Sys. Sec. Litig.* (9th Cir. 1994) 19 F.3d 1291, 1305 [mandating prime rate adjustment when trial court used historical rates for attorneys who left firm during litigation].)

34. I am aware that the typical hourly rates attorneys charge for these types of cases usually fall within the range of \$400 per hour - \$900 per hour. My hourly rate for this case is \$650.00 per hour. Hon. Timothy M. Casserly approved this rate for me in *Baranauskas v. Healthcare Management Services, et al.* (Case No. 37-2017-00013171-CU-OE-NC).

35. A true and correct copy of my firm's billing entries for the *Garcia Action* is submitted under seal as Exhibit "A."

36. A true and correct copy of my firm's billing entries for the *Klipa Action* is submitted under seal as Exhibit "B."

37. A true and correct copy of my firm's cost bill for the *Garcia Action* is attached as Exhibit "C."

38. A true and correct copy of my firm's cost bill for the *Klipa Action* is attached as Exhibit "D."

39. Based on the sufficient data that Defendants provided as well as my experience with valuing PAGA settlements, I endorse the settlement reached in this action. It was reached after thoroughly and carefully evaluating all available data, and was commensurate with the risks and benefits on both sides. The settlement was reached upon both sides exchanging and evaluating ample discovery sufficient for each party to have a realistic understanding of the monetary exposure. It is my opinion, the PAGA Settlement reached in this case was fair, just, and served the statute's stated objective of ensuring "genuine and meaningful" penalties. Plaintiffs'

1 counsel in the Actions were well versed in the area of PAGA related wage and hour litigation, and
2 defense counsel was well versed in PAGA related wage and hour litigation as well.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing
4 is true and correct.

5 Executed this 3rd day of March, 2022, in San Diego, California.

6
7 **LAW OFFICES OF DEVON K. ROEPCKE, PC**

8 By: 
9 DEVON K. ROEPCKE, ESQ.
10 Attorneys for Plaintiff
11 Lizbeth Garcia
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Exhibit “A”

Garcia Billing Entries Filed Under Seal

Exhibit “B”

Klipa Billing Entries Filed Under Seal

Exhibit “C”

Activities Export

03/03/2022

4:12 PM

Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
12/21/2020	\$	CourtCall for hearing on 12/22/20. ● Unbilled	00246-Garcia PAGA against Fairbanks Country Club	Devon Roepcke	1.00	94.00	-	94.00
11/13/2020	\$	CourtCall for hearing on 11/16/20. ● Unbilled	00246-Garcia PAGA against Fairbanks Country Club	Devon Roepcke	1.00	94.00	-	94.00
10/28/2020	\$	CourtCall for hearing on 10/29/20. ● Unbilled	00246-Garcia PAGA against Fairbanks Country Club	Devon Roepcke	1.00	94.00	-	94.00
10/14/2020	\$	CourtCall for hearing on 10/15/20. ● Unbilled	00246-Garcia PAGA against Fairbanks Country Club	Devon Roepcke	1.00	94.00	-	94.00
09/01/2020	\$	Non-Appearance court reporter fee. ● Unbilled	00246-Garcia PAGA against Fairbanks Country Club	Devon Roepcke	1.00	750.00	-	750.00
05/27/2020	\$	ex parte for continuance. ● Unbilled	00246-Garcia PAGA against Fairbanks Country Club	Devon Roepcke	1.00	69.95	-	69.95
03/03/2020	\$	filing fee ● Unbilled	00246-Garcia PAGA against Fairbanks Country Club	Devon Roepcke	1.00	11.95	-	11.95
12/05/2019	\$	filing fee. ● Unbilled	00246-Garcia PAGA against Fairbanks Country Club	Devon Roepcke	1.00	11.95	-	11.95
11/04/2019	\$	postage - Prendergast ● Unbilled	00246-Garcia PAGA against Fairbanks Country Club	Devon Roepcke	1.00	4.05	-	4.05
							\$0.00 0.0h	\$1,597.09 0.0h

Activities Export

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Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
09/09/2019	\$	notice of non-compliance. ● Unbilled	00246-Garcia PAGA against Fairbanks Country Club	Devon Roepcke	1.00	12.95	-	12.95
05/14/2019	\$	Motion to Compel Rogs and RFP ● Unbilled	00246-Garcia PAGA against Fairbanks Country Club	Devon Roepcke	1.00	129.95	-	129.95
11/06/2018	\$	filing fee - CMS ● Unbilled	00246-Garcia PAGA against Fairbanks Country Club	Devon Roepcke	1.00	9.95	-	9.95
10/09/2018	\$	postage MTC ● Unbilled	00246-Garcia PAGA against Fairbanks Country Club	Devon Roepcke	1.00	9.95	-	9.95
10/05/2018	\$	Motion to Compel and Motion to Deem Facts Admitted ● Unbilled	00246-Garcia PAGA against Fairbanks Country Club	Devon Roepcke	1.00	129.95	-	129.95
04/09/2018	\$	PAGA letter Postage ● Unbilled	00246-Garcia PAGA against Fairbanks Country Club	Devon Roepcke	1.00	4.95	-	4.95
04/09/2018	\$	PAGA LWDA Fee ● Unbilled	00246-Garcia PAGA against Fairbanks Country Club	Devon Roepcke	1.00	75.00	-	75.00
12/13/2017	\$	postage. check for file ● Unbilled	00246-Garcia PAGA against Fairbanks Country Club	Devon Roepcke	1.00	0.49	-	0.49
							\$0.00 0.0h	\$1,597.09 0.0h

Exhibit “D”

Activities Export

03/03/2022

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Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
11/24/2021	\$ ● Unbilled	CMS	00384-Klipa PAGA action against Bay Clubs Company LLC on behalf of Group Fitness Instructors	Devon Roepcke	1.00	12.00	-	12.00
02/04/2021	\$ ● Unbilled	Service of Process	00384-Klipa PAGA action against Bay Clubs Company LLC on behalf of Group Fitness Instructors	Devon Roepcke	1.00	90.00	-	90.00
11/23/2020	\$ ● Unbilled	filing fee	00384-Klipa PAGA action against Bay Clubs Company LLC on behalf of Group Fitness Instructors	Devon Roepcke	1.00	575.00	-	575.00
09/16/2020	\$ ● Unbilled	Certified Postage of PAGA Letter and Complaint.	00384-Klipa PAGA action against Bay Clubs Company LLC on behalf of Group Fitness Instructors	Devon Roepcke	1.00	4.95	-	4.95
09/15/2020	\$ ● Unbilled	PAGA Payment	00384-Klipa PAGA action against Bay Clubs Company LLC on behalf of Group Fitness Instructors	Devon Roepcke	1.00	75.00	-	75.00
							\$0.00 0.0h	\$756.95 0.0h