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ALEJANDRA ESPINOZA AND ELVIA RIOS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO - CENTRAL DIVISION**

Case No. 37-2021-00032982-CU-OE-CTL

ALEJANDRA ESPINOZA, an  
individual, and ELVIA RIOS, an  
individual,

Plaintiff,

v.

MICHAEL R COLLINS, an individual,  
LA JOLLA-FAY ST LTD, DBA “Inn  
by the Sea at La Jolla”, a partnership,  
and DOES 1 through 25, Inclusive,

Defendants.

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF EX PARTE MOTION FOR  
APPROVAL OF PAGA SETTLEMENT**

*[FILED CONCURRENTLY WITH  
SUPPORTING DECLARATION, AND  
[PROPOSED] ORDER AND JUDGMENT]*

Date: 08/31/22

Time: 8:30 a.m.

Dept.: C-74

Judge: Hon. Keri Katz

Complaint Filed: July 23, 2018

**I. INTRODUCTION**

This action involves two former employees of a small hotel (Inn by the Sea, La Jolla) who brought action for both wage and hour violations (meal breaks, rest breaks, off the clock work, and derivative violations of failure to pay wages upon termination and failure to provide accurate wage statements), as well as racial harassment and discrimination claims under the Fair Employment and Housing Act (FEHA). All aspects of this matter were settled at mediation.

This motion is for approval of Private Attorney General Act portion of this Action, which was brought on behalf of the state of the California and the aggrieved employee group.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiffs both worked for the Defendants at the Inn by the Sea, La Jolla as housekeepers. Ms. Espinoza worked beginning in 2008, through August 13, 2020. Ms. Rios worked from 2006 through August 13, 2020.

On or around May 27, 2021, Plaintiffs filed a PAGA Notice with the Labor and Workforce Development Agency, through the Agency's web-portal, and served Defendants by certified mail. This letter described the following alleged Labor Code violation:

1. Defendants failed to provide legally sufficient meal periods;
2. Defendants failed to provide legally sufficient rest periods;
3. Defendants failed to pay all hours worked, and therefore failed to pay both minimum wages and overtime wages;
4. Defendants failed to provide sick pay;
5. Failure to provide accurate wage statements; and
6. Failure to pay all wages upon termination.

Plaintiffs filed this action August 3, 2021. Parties engaged in early informal discovery and scheduled mediation Stephen McAvoy. As part of this informal discovery Defendant shared a sampling of the aggrieved employees pay and time records, as well as relevant policies.

Mediation was held May 25, 2022. All matters were settled at this mediation. The PAGA portion was estimated 55 aggrieved employees, and 918 unique pay periods, during the period of May 27, 2020 through the putative approval this settlement. \$30,000.00 was attributed to settle PAGA period.

Plaintiff's counsel seeks \$7,500, of this amount as fees. Parties expect to pay \$2,500 to the administrator to administer the settlement funds, leaving \$20,000 remainder for PAGA penalties, 75% to the State and 25% to the aggrieved employees.

## **III. STANDARD OF REVIEW**

### **A. Judicial Required Under the Private Attorney General Act**

Judicial review and approval of the PAGA claim settlement is required by statute. Cal. Labor Code § 2699(1)(2) (courts "shall review and approve any settlement of any civil action filed pursuant to [the PAGA].") The LWDA is afforded an opportunity to review a proposed PAGA settlement and can

1 submit objections. Cal. Labor Code § 2699(1). The notice of the proposed settlement, which is  
2 submitted online to the LWDA at the same time as the application for approval is submitted to the  
3 court, must also include any legal briefing and the Notice of Motion indicating when and where there  
4 will be a hearing on the proposed settlement.

#### 5 **B. No Standard Provided by the Act**

6 The PAGA statute, however, does not set forth an express standard for settlement approval nor  
7 have courts extensively discussed the standard.

8 Similarly, California Appellate Courts have not elaborated a standard. “California courts have  
9 not determined the standards by which a trial court reviews and approves a proposed settlement.”

10 *Starks v. Vortex Indus., Inc.*, 53 Cal. App. 5th 1113, 1124 (2020)

11 Generally, speaking PAGA does not follow class action requirements, and as such, those  
12 standards cannot be simply imported into PAGA. See *Arias v Superior Court* (2009) 46 Cal 4th 969 for  
13 a detailed discussion and holding that PAGA actions are not subject to class action requirements such  
14 as representation and commonality, etc. More specifically, the review and approval provisions of the  
15 code clearly call for a more limited inquiry (i.e., not the individual aspects of a settlement – to the  
16 degree those provisions could be peeled off of the PAGA provisions for analysis).

#### 17 **C. California Courts Review for Reasonableness or Fairness, generally.**

18 “PAGA settlements are subject to trial court review and approval, ensuring that any negotiated  
19 resolution is fair to those affected.” *Williams v. Superior Court*, (2017) 3 Cal. 5th 531, 549.

### 20 **IV. THE TERMS OF THE SETTLEMENT ARE FAIR AND REASONABLE HERE**

#### 21 **A. The Experience and Views of Counsel**

22 Counsel are convinced that this settlement is in the best interest of the aggrieved employee group  
23 and the named Plaintiffs based on the negotiations and a detailed knowledge of the issues present in this  
24 action. The length and risks of trial and other normal perils of litigation that may have impacted the value  
25 of the claims were all weighed in reaching the proposed settlement. The affirmative defenses asserted by  
26 the Defendant, the prospect of a potential adverse summary judgment ruling, the difficulties of complex  
27 litigation, the lengthy process of establishing specific damages and various delays and appeals, were also  
28 carefully considered by Counsel in agreeing to the proposed settlement. Counsel balanced the terms of

1 the proposed settlement against the probable outcome of liability and the range of recovery at trial.

2 Counsel on both sides share the view that the Settlement is a fair and reasonable compromise,  
3 taking into consideration the complexities of the case. Given the risks inherent in this litigation and the  
4 defenses asserted, the Settlement is fair, adequate, reasonable and in the best interests of the aggrieved  
5 employee group and named Plaintiffs.

6 **B. Attorneys' fees are reasonable.**

7 Counsel seeks less than that here. Counsel seeks 25% (\$7,500) of the PAGA settlement amount.  
8 Should the Court request a lodestar analysis counsel will provide it.

9 **V. CONCLUSION**

10 The Parties have reached an agreement that disposes of the risks, costs and delay associated with  
11 further litigation, while resolving the interests of the aggrieved employee PAGA group, the State, and  
12 the named parties on a fair and equitable basis. Defendant denies liability, but seeks, through this  
13 settlement, to obtain closure to this litigation. The settlement should be given final approval.

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16 DATED: August 30, 2022

**HEWGILL COBB LOCKARD, APC**

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20 By: \_\_\_\_\_  
21 Justin Hewgill, Esq  
22 *Attorney for Plaintiffs.*  
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