

HEWGILL COBB & LOCKARD, APC

Justin Hewgill (#259528)
1620 5th Avenue, Suite 325
San Diego, California 92101
Phone: (619) 432-2520
Fax: (619) 377-6026
justin@hcl-lawfirm.com
contact@hcl-lawfirm.com

Attorneys for Plaintiff,
ALEJANDRA ESPINOZA AND ELVIA RIOS

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

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.

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

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

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

Date: 10/14/2022

Time: 8:30 a.m.

Dept.: C-74

Judge: Hon. Keri Katz

Complaint Filed: July 23, 2018

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD; AND ALL**
2 **INTERESTED PARTIES:**

3 **PLEASE TAKE NOTICE** that on **October 14, 2022, at 8:30 a.m.**, or as soon thereafter as the
4 matter may be heard in Department C-74, of the above-entitled Court, Plaintiff ALEJANDRA
5 ESPINOZA, an individual, ("Plaintiff"), individually and on behalf of all similarly situated individuals,
6 will and hereby do move this Court for entry of an Order granting final approval of the Private Attorney
General Act.

7 This motion is based upon this notice and motion; the Memorandum of Points and Authorities
8 submitted herewith; the Hewgill Declaration; the other records and pleadings filed in this action; and
9 upon such other documentary and oral evidence or argument as may be presented to the Court at the
10 hearing of this motion.

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12 Dated: September 30, 2022

HEWGILL COBB & LOCKARD, APC

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15 By: 
16 Justin Hewgill, Esq.
17 *Attorney for Plaintiff.*
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1 **I. INTRODUCTION**

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

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

9 **II. FACTUAL AND PROCEDURAL BACKGROUND**

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

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

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

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

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

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

4 **III. STANDARD OF REVIEW**

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

6 Judicial review and approval of the PAGA claim settlement is required by statute. Cal. Labor
7 Code § 2699(1)(2) (courts "shall review and approve any settlement of any civil action filed pursuant to
8 [the PAGA].") The LWDA is afforded an opportunity to review a proposed PAGA settlement and can
9 submit objections. Cal. Labor Code § 2699(1). The notice of the proposed settlement, which is
10 submitted online to the LWDA at the same time as the application for approval is submitted to the
11 court, must also include any legal briefing and the Notice of Motion indicating when and where there
12 will be a hearing on the proposed settlement.

13 **B. No Standard Provided by the Act**

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

16 Similarly, California Appellate Courts have not elaborated a standard. "California courts have
17 not determined the standards by which a trial court reviews and approves a proposed settlement."
18 *Starks v. Vortex Indus., Inc.*, 53 Cal. App. 5th 1113, 1124 (2020)

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

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

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

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

1 **A. The Experience and Views of Counsel**

2 Counsel are convinced that this settlement is in the best interest of the aggrieved employee group
3 and the named Plaintiffs based on the negotiations and a detailed knowledge of the issues present in this
4 action. Hewgill Decl., ¶¶6-11. The length and risks of trial and other normal perils of litigation that may
5 have impacted the value of the claims were all weighed in reaching the proposed settlement. The
6 affirmative defenses asserted by the Defendant, the prospect of a potential adverse summary judgment
7 ruling, the difficulties of complex litigation, the lengthy process of establishing specific damages and
8 various delays and appeals, were also carefully considered by Counsel in agreeing to the proposed
9 settlement. Counsel balanced the terms of the proposed settlement against the probable outcome of
10 liability and the range of recovery at trial.

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

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

16 Plaintiffs' counsel contracted with named Plaintiffs for a 40% contingency fee. Counsel seeks
17 less than that here. See Hewgill Decl. ¶¶19-22. However, counsel seek less than in fees by this agreement
18 than their lodestar would justify.

19 **V. CONCLUSION**

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

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26 DATED: September 30, 2022

HEWGILL COBB LOCKARD, APC



By: _____

Justin Hewgill, Esq

Attorney for Plaintiffs.