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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NEVADA

DONALD E. DELAHUNT, on behalf of himself
and others similarly situated, and the general public,

Plaintiff,

v.

RALEY'S, a California corporation; and DOES 1-
50, inclusive,

Defendants.

CLASS ACTION

Case No. CU21-085853

Hon. Thomas M. Anderson, Dept. 6

**DECLARATION OF JON D. MEER IN
SUPPORT OF JOINT MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: June 10, 2022

Time: 9:00 a.m.

Dept: 6

1 I, JON D. MEER, declare and state as follows:

2 1. I am a partner at the law firm Seyfarth Shaw LLP, counsel of record for Defendant
3 Raley's in this action. I have personal knowledge of the facts contained in this declaration and, if called
4 as a witness, I could and would testify under penalty of perjury as to their accuracy.

5 **FACTS REGARDING PROCEDURAL HISTORY**

6 2. On September 29, 2021, Plaintiff, on behalf of a proposed class, filed a class action
7 lawsuit against Defendant in the Superior Court of the State of California for the County of Nevada,
8 Case No. CU21-085853, for alleged violations of the California Labor Code, Industrial Welfare
9 Commission Order No. 7-2001, and the California Business and Professions Code. All of the claims in
10 the Class Action Complaint were based on an alleged "underpayment" of vacation wages.

11 3. On October 8, 2021, Plaintiff, on behalf of himself, the State of California, and the other
12 allegedly Aggrieved Employees, filed a representative action against Defendant in the Superior Court of
13 the State of California, for the County of Nevada, Case No. CU21-085869, seeking penalties under
14 PAGA, based on the same alleged violations of the California Labor Code and Industrial Welfare
15 Commission Order No. 7-2001 that were the subject of the Class Action Complaint.

16 4. On December 23, 2021, Plaintiff, on behalf of himself, the State of California, and the
17 other allegedly Aggrieved Employees, filed a First Amended Complaint ("PAGA FAC") against
18 Defendant in the Superior Court of the State of California, for the County of Nevada, Case No. CU21-
19 085869. The PAGA FAC alleges Defendant is liable for civil penalties and other related relief for
20 Defendant's alleged failure to: (A) Pay all earned and unused vacation pay; (B) Issue only accurate and
21 complete itemized wage statements; (C) Timely pay wages during employment; and (D) Timely pay
22 wages upon termination of employment.

23 **THE PARTIES THOROUGHLY INVESTIGATED THE FACTUAL AND LEGAL ISSUES**

24 **PRIOR TO REACHING A SETTLEMENT**

25 5. Defendant discontinued its prior formula for calculating vacation wages as of June 30,
26 2021, approximately three months before Plaintiff filed his first action against Defendant, consisting of
27 the Class Action Complaint, filed on September 29, 2021.

6. Prior to the time that Plaintiff filed any Complaint, Defendant was already in the process of recalculating any underpaid vacation wages.

7. After the Class Action Complaint was filed, Defendant then shared data with Plaintiff's Counsel, showing the number of employees that were allegedly underpaid vacation wages, the amount allegedly owed to each employee, and the dates of employment for each employee who was allegedly underpaid.

8. Plaintiff's Counsel, Mr. Spivak, and I then continued to discuss the payroll data provided by Defendant, in order to arrive at a potential settlement.

9. Mr. Spivak and I discussed the approximate amount owed to each employee covered by the Class Action Complaint and the PAGA Complaint, while taking into account the fact that some employees had already released wage-related claims and penalties, in connection with prior class action settlements.

10. After crunching the numbers from Defendant's payroll records, Defendant provided the following information to Plaintiff:

The Number Of Employees Subject To The Class Action Complaint (Information From September 29, 2017 Through June 30, 2021)

- (i) Total Non-Union Team Members ("TMs"): 6,752
- (ii) Total Non-Union TMs Who Are Not Owed Monies: 69
- (iii) Total Non-Union TMs Who Were Overpaid: 4,819
 - a. Total Overpayment To Non-Union TMs: \$887,595.02
- (iv) Total Non-Union TMs Who Were Underpaid: 1,864
 - a. Total Underpayment to Non-Union TMs: \$241, 280.96
 - b. Total Non-Union TMs Owed Less Than \$1: 492 of 1,864
 - c. Total Non-Union TMs Owed \$1 To \$4.99: 139 of 1,864
 - d. Total Non-Union TMs Owed \$5 To \$9.99: 120 of 1,864
 - e. Total Non-Union TMs Owed \$10 To \$99: 552 of 1,864

The Number Of Employees Subject To The PAGA Complaint (Information From One Year Prior To The Filing Of Administrative Notice of PAGA Claims On August 4, 2021 Through The Present)

- (i) Total Non-Union TMs: 3,523
- (ii) Total Non-Union TMs Who Are Not Owed Monies: 73
- (iii) Total Non-Union TMs Who Were Overpaid: 2,249
 - a. Total Overpayment To Non-Union TMs: \$183,890.17
- (iv) Total Non-Union TMs Who Were Underpaid: 1,201
 - a. Total Underpayment To Non-Union TMs: \$106,445.42
 - b. Total Non-Union TMs Owed Less Than \$1: 321 of 1,201
 - c. Total Non-Union TMs Owed \$1 To \$4.99: 51 of 1,201
 - d. Total Non-Union TMs Owed \$5 To \$9.99: 57 of 1,201

e. Total Non-Union TMs Owed \$10 To \$99: 463 of 1,201

THE SETTLEMENT IS FAIR AND REASONABLE

11. The Parties reached a settlement through negotiations over the course of several weeks after investigating and discussing the claims, defenses, and potential damages. The Parties exchanged information and data, conducted factual and legal research, and prepared damages analyses. The settlement that has been reached, is the product of effort and expense by the Parties and their counsel.

12. The Parties negotiated a non-reversionary settlement of \$346,000 for a class of 1,864 Class Members, approximately 70% of whom were underpaid by less than \$100. Defendant is satisfied this figure is reasonable in light of the risks and expense of continued litigation.

THE SETTLEMENT WAS NEGOTIATED AT ARM'S LENGTH AND NOT COLLUSIVE

13. Defendant has argued that there is a “good faith dispute” as to whether “waiting time” penalties would be awarded under California Labor Code section 203, given the overpayment of vacation wages to the majority of employees.

14. Defendant also has argued that there is a “good faith dispute” as to whether penalties for “inaccurate wage statements” would be awarded under California Labor Code section 226, given that there was a lack of “knowing and intentional” conduct by Defendant in the underpayment of vacation wages for a small minority of employees.

15. Defendant also argued that current case authority holds that penalties under California Labor Code section 226 are not available for “missing” wages on a wage statement, so long as a wage statement is accurate as to the wages that are included.

16. Given the fact that the bulk of potential exposure in this case involves penalties under California Labor Code section 203 and 226, Defendant argued that the risk of a failure to recover these penalties has a significant impact on the value of a potential settlement. Defendant further argued that the failure to show a violation of the California Labor Code would create a risk of failure to recover penalties under PAGA.

THE SETTLEMENT IS WELL WITHIN THE RANGE OF REASONABLENESS GIVEN
PLAINTIFF’S CLAIMS AND DEFENDANT’S DEFENSES

17. The Settlement is reasonable, because it seeks to restore the unpaid vacation wages to the minority of employees who are in the settlement class, for the period of September 29, 2017, through the date Defendant changed its vacation wage calculation formula, June 30, 2021.

18. Defendant contends that the alleged failure to timely pay final wages was derivative of the vacation wage claim that is in dispute due to the fact that the vast majority of employees were overpaid vacation wages, such that there was not a “willful showing that the employer knew of its obligation and intentionally refused to act.” *Baker v. American Horticulture Supply, Inc.*, 186 Cal. App. 4th 1059, 1076 (2010). Defendant contends that the Court is unlikely to award both “waiting time” penalties because the overpayment of vacation wages for a majority of employees shows that there was a “good faith dispute” as to whether all wages were paid at the time of separation of employment.

19. Defendant contends that the alleged wage statement claims, which are entirely derivative of the vacation wage claim, cannot trigger a wage statement violation, were not the result of a “knowing and intentional failure” by Defendant to comply with section 226(a) as required by Labor Code §226(e), and that the employees did not suffer injury for purposes of recovering penalties as required under Labor Code §226(e)(2)(B)(i) and (ii). Defendant also contends that the only applicable wage statement would be those for pay periods when employees took vacation time and this would not constitute the majority of the pay periods. Defendant also contends that the only applicable wage statement would be those for pay periods when employees took vacation time and this would not constitute the majority of the pay periods.

20. Defendant contends that it overpaid the vast majority of its employees for vacation wages.

21. As soon as it discovered that a small minority of employees were underpaid, Defendant changed its vacation wage policy.

22. Prior to the time that Plaintiff filed any Complaint, Defendant was already in the process of calculating any underpaid vacation wages to pay employees any wages due.

23. Thus, Defendant contends there is no basis to award PAGA penalties, or that PAGA penalties should be significantly reduced.

24. The Court is authorized to exercise discretion to assess civil penalties and may award a lesser amount than the maximum civil penalty amount if, based on the facts and circumstances of the particular case, to do otherwise “would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” See Cal. Lab. Code § 2699(e). Courts have routinely reduced PAGA penalties by as much as 95% or 97%, especially where an employer lacked culpability in the alleged unlawful conduct.¹ Thus, the amount of PAGA penalties of \$4,000 is reasonable.

25. The PAGA penalties of \$4,000 in this case are also reasonable, given that 75% of these penalties must be paid to the State of California, while 25% are distributed to the Aggrieved Employees. By allocating a relatively small amount of the settlement to PAGA penalties, the recovery for employees is maximized because a lesser amount is distributed to the State of California.

THE PROPOSED CLASS NOTICE IS ADEQUATE AND INCLUDES ALL REQUIRED COMPONENTS

26. Attached to the Joint Stipulation as Exhibits “2,” “3,” and “4” are the proposed Notice of Settlement, the Request for Exclusion, and Objection Form, collectively referred to as the “Notice Packet.”

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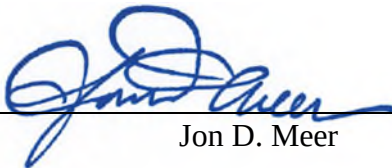
¹ See, e.g., *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 517 (2018) (“Rather than imposing the full penalty, . . . which the court noted in this instance would be unjust, arbitrary, and oppressive, the court imposed a penalty of only \$5 per violation.”); *Barsegian v. Gilead Sciences, Inc.*, Case No. BC714686 (Los Angeles Super. Ct. 2020) (approving PAGA penalties of \$3.87 per pay period, in a case involving claims of daily unpaid “on-call” time and meal and rest period violations); *Heredia v. Eddie Bauer LLC*, Case No. 5:16-cv-06236-BLF (N.D. Cal. Apr. 17, 2020) (approving PAGA penalties of \$18.83 per pay period, for a case alleging that retail store employees were forced to work off the clock for a few minutes each day); *Kaanaana v. Barrett Bus. Servs., Inc.*, 29 Cal. App. 5th 778, 788 (2018), review granted on other grounds (noting that the trial court “exercised its discretion to reduce the [PAGA] penalties to 13 percent of the full amount [requested, because] [o]n average, plaintiffs were deprived of 13 percent of the 30-minute meal period”); *Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013 WL 2917624 at *2 (Super. Ct. L.A. County, May 20, 2013) (approving PAGA penalties averaging \$7.49 per aggrieved employee); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL 1182822 (Super. Ct. L.A. County, March 12, 2013) (approving PAGA penalties averaging \$3.33 per aggrieved employee).

1
2 **THE CLASS MEETS THE REQUIREMENTS FOR PROVISIONAL CERTIFICATION**

3 27. Defendant identified approximately 1,864 provisional Class Members from its time and
4 payroll records and has agreed to provide the class list to the Claims Administrator.

5 28. I declare under penalty under perjury under the laws of the State of California and the
6 laws of the United States of America that the foregoing is true and correct, based on my own personal
7 knowledge.

8 29. I have signed this declaration on May 2, 2022, in Los Angeles, California.

9
10 
11 _____
Jon D. Meer