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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SISKIYOU**

KIMBERLY M. LATOS, individually and as
representative of the State of California on
behalf of herself as an aggrieved employee,

Plaintiff,

v.

SISKIYOU HUMANE SOCIETY, INC., a
California non-profit corporation, and DOES 1
through 20, inclusive,

Defendants.

Case No. SCCVCV22-52

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION
FOR AN ORDER APPROVING THE
SETTLEMENT OF PLAINTIFF'S PAGA
CLAIMS AND DISMISSING THOSE
CLAIMS WITH PREJUDICE**

Hearing Date: June 16, 2022

Hearing Time: 9:30 a.m.

Hearing Location: Courtroom 2

Complaint Filed: January 19, 2022

The Plaintiff, Kimberly M. Latos, by and through her undersigned counsel, respectfully submits this Memorandum of Points and Authorities in support of Plaintiff's Unopposed Motion for an Order approving the settlement of Plaintiff's PAGA claims against the Defendant, Siskiyou Humane Society, Inc., and dismissing those claims with prejudice (hereinafter referred to as "Plaintiff's Unopposed Motion").

I. SUMMARY OF THE CLAIMS AT ISSUE

Plaintiff's claims against Defendants are set forth in Plaintiff Individual and Representative Action Complaint ("Plaintiff's Original Complaint") filed on January 19, 2022, and Plaintiff's First Amended Individual and Representative Action Complaint ("Plaintiff's First Amended Complaint") filed on March 31, 2022. (Declaration of Daniel V. Santiago in Support of Plaintiff's Unopposed

1 Motion ["Santiago Declaration"], ¶3.) Plaintiff's First Amended Complaint is the operative
2 complaint in the Action. (Santiago Declaration, ¶3.)

3 Plaintiff alleges the following causes of action against the Defendant in Plaintiff's First
4 Amended Complaint: (1) Defendant's alleged failure to pay all wages due and owing in violation of
5 California Labor Code ("Labor Code") §§204(a), 218.6, 227.3, 510(a), 1194(a) and 1197 and
6 Industrial Welfare Commission ("IWC") Wage Order No. 5-2001, §§3 and 4 (First Cause of
7 Action); (2) Defendant's alleged failure to furnish accurate itemized wage statements in violation of
8 Labor Code §226(a) (Second Cause of Action); (3) Defendant's alleged failure to timely pay all
9 wages due upon termination of employment in violation of Labor Code §§201 and 203 (Third
10 Cause of Action); (4) Defendant's alleged violations of California Business & Professions Code
11 §17200 et seq. (Fourth Cause of Action); (5) PAGA penalties for Defendant's alleged failure to pay
12 all wages due and owing (Fifth Cause of Action); (6) PAGA penalties for Defendant's alleged
13 failure to furnish accurate itemized wage statements (Sixth Cause of Action); and (7) PAGA
14 Penalties for Defendant's alleged failure to timely pay all wages due upon termination of
15 employment (Seventh Cause of Action). (Santiago Declaration, ¶4.)

16 Defendant denies the material allegations in Plaintiff's First Amended Complaint. (Santiago
17 Declaration, ¶5.) Defendant further denies any violation of the Labor Code or IWC Wage Order
18 No. 5-2001 or any other wrongdoing. (Santiago Declaration, ¶5.)

19 Plaintiff has filed an Unopposed Motion for an Order approving the settlement of Plaintiff's
20 PAGA claims against the Defendant and dismissing those claims with prejudice. Plaintiff
21 respectfully submits that, for the reasons set forth below, the Court should grant the relief requested
22 herein.

23 II. STATUS OF THE LITIGATION

24 Plaintiff's First Amended Complaint against Defendant is the operative complaint in the
25 Action. (Santiago Declaration, ¶3.) If the Court grants the relief requested in Plaintiff's Unopposed
26 Motion, Plaintiff would respectfully request that the Court vacate all dates on its calendar relating to
27 the Action. (Santiago Declaration, ¶6.) A Case Management Conference is set for July 21, 2022, at

1 9:30 a.m.. (Santiago Declaration, ¶6.) This case is not currently set for trial. (Santiago
2 Declaration, ¶6.)

3 **III. THE PARTIES' SETTLEMENT AGREEMENT**

4 The parties, by and through their respective counsel, have agreed to resolve all of the
5 Plaintiff's claims against the Defendant in the Action. (Santiago Declaration, ¶7.) To that end, the
6 parties have executed a Confidential Settlement Agreement and Mutual Release of All Claims
7 ("Settlement Agreement") reflecting the settlements of Plaintiff's PAGA claims against the
8 Defendant for Two Thousand Dollars (\$2,000) and Plaintiff's non-PAGA claims against the
9 Defendants for Eighty Eight Thousand Dollars (\$88,000), for a Gross Settlement Amount of Ninety
10 Thousand Dollars (\$90,000). (Santiago Declaration, ¶7.) A true and correct copy of the parties'
11 Settlement Agreement is attached to the Santiago Declaration as Exhibit 1.

12 More specifically, under the Settlement Agreement, Defendants shall pay a Gross Settlement
13 Amount of Ninety Thousand Dollars (\$90,000) as follows: (a) One Thousand Five Hundred Dollars
14 (\$1,500) to the Labor and Workforce Development Agency ("LWDA") in connection with the
15 settlement of Plaintiff's PAGA claims against the Defendant (i.e., 75% of the PAGA settlement in
16 accordance with Labor Code §2699(i)); (b) Five Hundred Dollars (\$500) to Plaintiff in connection
17 with the settlement of Plaintiff's PAGA claims against the Defendant (i.e., 25% of the PAGA
18 settlement in accordance with Labor Code §2699(i)); (c) Twenty Five Thousand Seven Hundred
19 Fifty Dollars (\$25,750) to Plaintiff in settlement of her wage-related claims (to be reported on an
20 IRS Form W-2 and its state and local equivalents); (d) Twenty Five Thousand Seven Hundred Fifty
21 Dollars (\$25,750) to Plaintiff in settlement of her non-wage-related claims, penalties and interest (to
22 be reported on an IRS Form 1099 and its state and local equivalents); and (e) Thirty Six Thousand
23 Five Hundred Dollars (\$36,500) to Plaintiff's counsel's firm as attorney's fees and costs incurred in
24 connection with the prosecution of Plaintiff's non-PAGA claims against the Defendant (to be
25 reported on an IRS Form 1099 and its state and local equivalents). (Santiago Declaration, ¶8.)

26 Upon receipt of notice of the Court's entry of an Order granting the relief requested in
27 Plaintiff's Unopposed Motion, Plaintiff's counsel will file a Request for Dismissal of Plaintiff's
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1 non-PAGA claims against the Defendant. (Santiago Declaration, ¶9.) Such dismissal will be with
2 prejudice pursuant to the terms of the parties' Settlement Agreement. (Santiago Declaration, ¶9.)

3 Notably, The parties' Settlement Agreement is subject to and expressly conditioned upon:
4 (1) the Court's entry of an Order approving of the settlement of Plaintiff's PAGA claims and
5 dismissing those claims with prejudice; and (2) Plaintiff's filing of a Request for Dismissal of her
6 individual non-PAGA claims against the Defendant with prejudice. (Santiago Declaration, ¶10.)

7 **IV. PLAINTIFF REQUESTS THE COURT'S APPROVAL OF THE PROPOSED**
8 **SETTLEMENT OF HER PAGA CLAIMS, AS REQUIRED.**

9 The proposed settlement of Plaintiff's PAGA claims against the Defendant is fair and
10 reasonable in light of the following factors, among others: (a) Plaintiff's counsel has conducted
11 sufficient investigation of the facts underlying Plaintiff's claims that support Plaintiff's counsel's
12 conclusion that the proposed settlement of Plaintiff's PAGA claims is fair and reasonable (such
13 investigation and discovery have included, *inter alia*: engaging in numerous, detailed conversations
14 with Plaintiff regarding the underlying facts and the status of the parties' settlement discussions and
15 analyzing Plaintiff's timecards and related papers provided by Plaintiff); (b) any settlement,
16 including the proposed settlement in the Action, should take into consideration the time,
17 inconvenience and uncertainty of trial that are avoided by the settlement; (c) under Labor Code
18 §2699(i), allegedly aggrieved employees like Plaintiff are entitled to receive only 25% of any
19 PAGA settlement with the remaining 75% to be paid to the LWDA; (d) as explained in greater
20 detail in the Santiago Declaration at ¶¶12-13, the proposed settlement of Plaintiff's PAGA claims
21 for Two Thousand Dollars (\$2,000) exceeds Plaintiff's counsel's evaluation of a fair and reasonable
22 settlement of those PAGA claims; and (e) as explained in greater detail in the Santiago Declaration
23 at ¶¶16-21, Plaintiff's counsel's background and experience support the conclusion that the
24 proposed settlement of Plaintiff's PAGA claims is fair and reasonable. (Santiago Declaration,
25 ¶¶11-13 and 16-21.)

26 Plaintiff requests the Court's approval of the proposed settlement of her PAGA claims in
27 accordance with Labor Code §2699(l)(2) which requires Court approval for every PAGA
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1 settlement.¹ Labor Code §2699(1)(2) further requires that the proposed PAGA settlement be
2 submitted to the LWDA at the same time that it is submitted to the Court. Accordingly, Plaintiff's
3 counsel submitted copies of Plaintiff's Unopposed Motion and all related papers to the LWDA (via
4 online filing with the LWDA) immediately before filing those papers in the Siskiyou County
5 Superior Court. (Santiago Declaration, ¶22.) A true and correct copy of the email Plaintiff's
6 counsel received from the DIR PAGA Unit on behalf of the LWDA confirming her submission of
7 those papers to the LWDA earlier that day is attached to the Santiago Declaration as Exhibit 2.
8 (Santiago Declaration, ¶22.)

9 Plaintiff's counsel does not anticipate receiving any objection or other communication from
10 the LWDA regarding the relief requested herein. (Santiago Declaration, ¶23.) Plaintiff's counsel
11 will advise the Court whether he has received any such objection or other communication from the
12 LWDA during the hearing on this Unopposed Motion. (Santiago Declaration, ¶23.)

13 **V. NECESSITY FOR REQUESTED RELIEF**

14 Plaintiff respectfully submits that this Unopposed Motion is warranted in light of the
15 following factors, among others: (1) the parties are prepared to consummate their Settlement
16 Agreement immediately after the Court approves of the settlement of Plaintiff's PAGA claims and
17 dismisses those claims with prejudice; and (2) there is no just reason to delay the consummation of
18 the parties' Settlement Agreement. (Santiago Declaration, ¶14.)

19 Of note, Plaintiff is the only aggrieved employee affected by her PAGA claims against the
20 Defendant given that, to her knowledge, she is the only employee whom she contends Defendant
21 misclassified as an exempt employee not entitled to overtime pay during the time period relevant to
22 her PAGA claims (i.e., within one year of the date of filing of Plaintiff's Original Complaint).
23 (Santiago Declaration, ¶15). Accordingly, notice of the proposed settlement of Plaintiff's PAGA
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27 ¹ Labor Code §2699(1)(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 claims and the dismissal of those claims as described herein is not required to be provided to any
2 other employee of Defendant.² (Santiago Declaration, ¶15).

3 **VI. REQUESTED RELIEF**

4 For the foregoing reasons, Plaintiff respectfully requests that the Court enter an Order, *inter*
5 *alia*: (1) approving the settlement of Plaintiff's PAGA claims against the Defendant and dismissing
6 those claims with prejudice; and (2) granting such additional relief as the Court deems just and
7 appropriate. Plaintiff respectfully files under separate cover a [Proposed] Order reflecting the relief
8 requested herein.

9 Plaintiff's counsel has provided Defendants' counsel with almost final drafts of Plaintiff's
10 Unopposed Motion and related papers. (Santiago Declaration, ¶24). Defendants' counsel has
11 informed Plaintiff's counsel that Defendants' counsel does not oppose the relief requested herein.
12 (Santiago Declaration, ¶24).

13 Dated: June 9, 2022

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

14 By:



15 Daniel V. Santiago, Esq.

16 Attorney for Plaintiff, Kimberly M. Latos

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25 ² Even if there were aggrieved employees other than Plaintiff, notice to them would not be required. *See*,
26 *e.g.*, *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1122 (9th Cir. 2014) ("PAGA has no notice
27 requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action);
28 *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1134 (N.D. Cal. 2016) ("PAGA does not require class
actions procedures, such as notice and opt-out rights."); and *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010
WL 134077, at *5 (N.D. Cal. Apr. 2, 2010) ("Unnamed employees need not be given notice of the PAGA
claim, nor do they have the ability to opt-out of the representative PAGA claim.")