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Attorneys for Plaintiff PATRICIA SOTO, in a Representative capacity only, and on behalf of other members of the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

PATRICIA SOTO, in a Representative capacity only, and on behalf of other members of the general public similarly situated,

Plaintiff

v.

NOBLE HOUSE HOTELS & RESORTS.
L.P., a Texas Limited Partnership; NOBLE
HOUSE SHELTER POINTE, LLC, a
Delaware Limited Liability Company; and
DOES 1-10, inclusive

Defendants

CASE NO. 37-2022-00034592-CU-OE-CTL

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF EX PARTE APPLICATION
RE: UNOPPOSED PAGA APPROVAL**

Date:

Time:

Dept.: C- 68

Judge: Hon. Richard S. Whitney

I. SUMMARY OF MOTION

1 This is a “Wage and Hour” representative action, under California’s Private Attorneys General
2 Act of 2004. Plaintiff PATRICIA SOTO, in a Representative capacity only, and on behalf of other
3 members of the general public similarly situated (“Plaintiff” respectfully submits the instant Points
4 and Authorities in support of her motion for Approval of the PAGA Settlement. This Request is
5 **Unopposed**. The LWDA was timely notified of this proposal, and does **not** object to the allocations.
6

7 **II. SUMMARY OF FACTS**

8 This is a Labor Code §2698 *et seq.* “Wage and Hour” (“PAGA”) action brought against
9 Defendants NOBLE HOUSE HOTELS & RESORTS. L.P., and NOBLE HOUSE SHELTER
10 POINTE, LLC, (“NOBLE”). As this is a “PAGA” action only, the Limitations Period begins on June
11 18, 2021. There are approximately **490** PAGA Members at issue. (Yaeckel Decl., ¶3).
12

13 Following the exchange of discovery, analysis of numerous sets of time and wage data, and
14 a mandatory settlement conference before Hon. Richard S. Whitney, the Parties reached a proposed
15 settlement that includes a payment of penalties to the LWDA. (Yaeckel Decl., ¶4).
16

17 Based on the below figures, each PAGA Member would receive an average payment of
18 approximately **\$43.24**. This figure represents an average only, as the actual amounts paid will vary
19 depending on the amount of workweeks employed during the PAGA period.
20

21 On **November 28, 2023**, the Parties participated in an all-day mediation presided over by Jill
22 Sperber, Esq.. The case did not settle that day, but direct negotiations between the parties eventually
23 led to this Agreement and to settle the action. (Yaeckel Decl., ¶5).
24

25 On **May 2, 2024**, Plaintiff, uploaded via the LWDA’s electronic filing portal, all of the
26 proposed settlement terms, including the PAGA allocations.
27

28 On **May __, 2024** Plaintiff’s counsel uploaded via the LWDA’s electronic filing portal
copies of this entire *ex parte* application, including the Notice, this supporting Memorandum,
Declaration, and Proposed Order & Judgment. (Yaeckel Decl., ¶7). To date, Plaintiff’s counsel has
not received any response. *Id.*

The Total Value of the proposed Settlement is **\$204,000** which is broken down as follows:

*	\$70,000	Attorneys’ Fees
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- * **\$13,000.00** Costs of Litigation.
- * **\$6,250.00** Administration Expenses
- * **\$30,000.00** (\$3,000 rep enhancement + \$27,000 individual 1542 release)
- * Sub-Total of **\$84,750.00** 75% (**\$63,562.50**) shall be assigned/paid to the LWDA as penalties.
- * The remaining 25% (**\$21,187.50**) in cash will be disbursed among all employees based on work weeks employed during the PAGA period.(Yaeckel Decl., ¶8).

Given the above, the average payment to each individual employee will be approximately **\$43.24**. (*Id.*)

Further, there are no restrictions for any of the **490** employees to file individual actions, as the settlement agreement only covers PAGA claims. (Yaeckel Decl., ¶9); **Exhibit 1**: “Release by Aggrieved Employees” § 5.3 p. 7).

Please Note: Although this was alleged as a PAGA only claim, Defendant required Plaintiff to release all claims (e.g., a full 1542 release) as a part of the proposed settlement. In addition to the PAGA claims, Plaintiff possessed individual Labor Code violations based on the same set of facts underlying her PAGA claims. Plaintiff Soto also represents that she has additional individual, non-wage and hour claims against Defendant. Plaintiff Soto is separately settling these individual claims and in exchange is providing a general release of such claims. Plaintiff Soto will also separately be paid \$27,000 for resolution of her individual claims as set forth in a separate individual settlement agreement. As set forth above, the LWDA has notice of this Settlement and does **not** object.

III. CONTROLLING AUTHORITY

PAGA “authorizes an employee to bring an action for civil penalties on behalf of the state against his or her employer for Labor Code violations committed against the employee and fellow employees.” *Iskanian v. CLS Trans. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 360. “To compensate for the lack of [a]dequate financing of essential labor law enforcement functions,’ the California legislature enacted PAGA to permit aggrieved employees to act as private attorneys general to collect

1 civil penalties for violations of the Labor Code.” *Sakkab v. Luxottica Retail N. Am., Inc.* (9th Cir.
2 2015) 803 F.3d 425, 430.

3 Recently the Court of Appeal has given guidance to trial courts in reviewing a PAGA
4 settlement:

5 We therefore hold that **a trial court should evaluate a PAGA settlement to**
6 **determine whether it is fair, reasonable, and adequate in view of PAGA's**
7 **purposes to remediate present labor law violations, deter future ones, and to**
8 **maximize enforcement of state labor laws.** (*See Williams, supra*, 3 Cal.5th at p.
9 546, 220 Cal.Rptr.3d 472, 398 P.3d 69 [PAGA "sought to remediate present
violations and deter future ones"]; *Arias, supra*, 46 Cal.4th at p. 980, 95 Cal.Rptr.3d
588, 209 P.3d 923 [the declared purpose of PAGA was to augment state enforcement
efforts to achieve maximum compliance with labor laws].)
Moniz v. Adecco USA, Inc., (2021) 72 Cal. App. 4th 56, 77.

10 Prior to *Moniz*, other Courts have followed the rationale in *O'Connor v. Uber Techs., Inc.*, 201
11 F.Supp.3d 1110, 132-35 (N.D. Cal. 2016), which states a court is permitted to approve a PAGA
12 settlement if the settlement is “fair and adequate in view of the purposes and policies of the statute.”
13 *Id.*

14 A court may award a lesser amount than the maximum civil penalty amount if, based on the
15 facts and circumstances of the particular case, to do otherwise would result in an award that is unjust,
16 arbitrary and oppressive, or confiscatory. Lab. Code, § 2699(e)(2); *Amaral vs. Cintas Corp. No. 2*
17 (2008) 163 Cal.App.4th 1157, 1213-1214. *See e.g., Fleming v. Covidien Inc.*, 2011 WL 7563047, at
18 *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by 82%).

19 The Court in *Flores v. Starwood Hotels & Resorts Worldwide, Inc.* (“Flores”) the court was
20 asked to approve a PAGA settlement (the “Settlement”). *Flores v. Starwood Hotels & Resorts*
21 *Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1075–76 (C.D. Cal. 2017). In deciding whether the court
22 should approve the Settlement, the court looked at the California legislature, the California Courts of
23 Appeal, the California Supreme Court, and the California Labor & Workforce Development Agency
24 for a definitive answer as to what precedent the court should follow in either approving or denying the
25 settlement. *Id.* The court was not able to find a definitive answer. *Id.* As such, the court followed the
26 rationale in *O'Connor v. Uber Techs., Inc.*, 201 F.Supp.3d 1110, 132-35 (N.D. Cal. 2016), which states
27 a court is permitted to approve a PAGA settlement if the settlement is “fair and adequate in view of
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1 the purposes and policies of the statute.” *Id.*

2 In deciding whether the settlement was “fair and adequate,” the *Court’s have* looked sought
3 how the parties divvied up the civil penalties under Section 2699(i) of the California Labor Code.
4 *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1076–77 (C.D. Cal.
5 2017). As the court felt the parties’ division of penalties was fair and adequate pursuant to the statute,
6 the court approved the settlement. *Id.*

7 **IV. DISCUSSION**

8 The parties reached the terms of their proposed settlement agreement following the exchange
9 of extensive information and employment records. The parties submit the proposed settlement of
10 PAGA penalties is fair, adequate, and reasonable.

11 **A. THE BASIS FOR THE *EX PARTE* REQUEST**

12 The instant *Ex Parte* request is based on the fact that (1) the PAGA period “cutoff date” is
13 contingent on Court approval, any delay diminishes the amounts received by the impacted employees;
14 (2) Notice to certain ex-employees may be adversely impacted by further delay (*i.e.* ex-employees
15 may change their mailing address without filing a proper “forwarding address”). (Yaeckel Decl., ¶10).

16 Additionally, an expedient approval of this settlement will provide a direct benefit to the
17 impacted employees at issue. The “fixes” provide a guarantee of future Labor Code compliance, and
18 an immediate monetary benefit. It also allows Defendants the opportunity to move on, and focus on
19 future business. (Yaeckel Decl., ¶11).

20 **B. THE NATURE AND SCOPE OF THE ALLEGED VIOLATIONS**

21 The Complaint alleges Labor Code violations which triggered penalties under the PAGA
22 statute (Labor Code §2698 et seq.) (See ROA #1.) Plaintiff also alleged all employees were denied
23 compliant Meal and Rest Periods, minimum wages, overtime, accurate wage statements,
24 reimbursements, and suffered waiting time violations. (See ROA #1, Exhibit 1: “Plaintiff’s LWDA
25 Notice” attached thereto).

26 Specifically, Plaintiff alleges that she - and other employees - received “short,” “late,” or
27 “missing” Meal Periods, including those documented within Defendant’s Time Records. (Decl.
28

1 Yaeckel, ¶12). Plaintiff also challenged whether Defendant maintained lawful meal and rest periods.
2 Plaintiff alleged she- and other employees -were not properly compensated due to Defendant’s failure
3 to maintain accurate time records. (*Id.*) Finally, Plaintiff also challenged whether Defendant
4 maintained lawful meal and rest period policies. (*Id.*)

5 **C. ANALYSIS OF POTENTIAL LIABILITY, ON A REPRESENTATIVE BASIS**

6 The catalyst of this litigation concerned allegations that Ms. Soto was denied legally compliant
7 meal and rest periods, and was not paid for all Overtime hours worked. (Decl. Yaeckel, ¶13).

8 Investigations completed by Plaintiff’s counsel revealed that Defendant’s timekeeping policies
9 and employee records were not in compliance with California law. (Decl. Yaeckel, ¶14). However,
10 these investigations also revealed that the “rate of violation” by Defendant was significantly less than
11 100%. (*Id.*). On many of those occasions, it appears that Defendant did, in fact, comply with the law.
12 (*Id.*)

13 Based on the above, the maximum liability in a case of this type would be in the range of
14 **\$250,000.00 to \$350,000.00**. (Decl. Yaeckel, ¶15). However, without revealing settlement protected
15 communications, it was highly unlikely Plaintiff could ever recover anything approaching a maximum
16 judgment. (*Id.*)

17 Moreover, Plaintiff’s counsel is aware of the Court’s discretion to mitigate penalties pursuant
18 to California Labor Code section 2699(e)(2). (Decl. Yaeckel, ¶16). To confirm, Plaintiff’s counsel
19 experienced the mitigation of “PAGA” penalties in *Carrington v. Starbucks Corp.* (2018) 30
20 Cal.App.5th 504. (*Id.*) In *Carrington*, Judge Bacal significantly mitigated PAGA penalties (\$5 per
21 violation), due to the efforts made by the employer to comply with the law. (*Id.*)

22 Plaintiff’s counsel agrees with Her Honor, and with the provision of the Labor Code, that
23 penalties *should* be mitigated where violations are minimal (or rare), or where the employer makes
24 significant efforts to comply with the Labor Code. (Decl. Yaeckel, ¶17).

25 As the above factors exist in this case, it is the opinion of Plaintiff’s counsel that the settlement
26 is fair, adequate, and reasonable. Specifically, Plaintiff’s counsel’s understanding is that Defendant
27 has agreed to make changes to its policies, and amend them to the extent they do not comply with
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1 California law. (Decl. Yaeckel, ¶18).

2 Plaintiff's counsel, William B. Sullivan has approximately 30 years of experience in "class
3 action" litigation, both as plaintiff and defense counsel. (Decl. Yaeckel, ¶19). Plaintiff's counsel, Eric
4 K. Yaeckel, has over 13 years of experience prosecuting class and representative action claims under
5 the California Labor Code. (*Id.*) Plaintiff's counsel, Eric K. Yaeckel and William B. Sullivan, are the
6 attorneys of record in a matter that was recently heard (and favorably decided) before the California
7 Supreme Court titled *Donohue v. AMN Servs., LLC* (2021) 11 Cal.5th 58. (*Id.*) The *Donohue* matter
8 was a certified class and PAGA action. (*Id.*)

9 Plaintiff's counsel were lead counsel on approximately 40 employment "wage and hour"
10 claims with class action, or representative action allegations. (*Id.*) Based on said experience, it is the
11 opinion of Plaintiff's counsel that this settlement represents a fair and adequate payment. (Yaeckel
12 Decl., ¶20)

13 **D. THE ALLOCATION OF PENALTIES, AND LIMITED RELEASE OF CLAIMS**

14 While Labor Code section 2699(l) requires a court to "review and approve any penalties sought
15 as part of a proposed settlement agreement," it does not provide any guidance as to what is considered
16 an 'adequate' allocation of these penalties. However, Trial Courts have held that *where the* division
17 of penalties was fair and adequate and in accordance with the PAGA statute, the court should
18 approved the settlement. *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F. Supp. 3d 1074,
19 1076–77 (C.D. Cal. 2017).

20 After subtracting the contingent costs set forth above, the parties seek to allocate **\$84,750.00**
21 of the total settlement to the Total Value of the PAGA Fund. 75% (**\$63,562.50**) shall be assigned/paid
22 to the LWDA as penalties. The remaining 25% (**\$21,187.50**) will be allocated and distributed among
23 the current or ex-employees within the PAGA Period. (Yaeckel Decl., ¶21)

24 The parties contend the settlement agreement amount is fair, adequate, and reasonable.
25 (Yaeckel Decl., ¶¶ 18, 20, 22). Moreover, the PAGA settlement does not bar any employee from
26 pursuing their own individual Labor Code claims. (Yaeckel Decl. ¶9; **Exhibit A: "Released Claims"**
27 § 1.01(i), p. 3).). The release only applies to the PAGA claims for penalties, based upon the
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1 allegations in Plaintiff's operative Complaint. (*Id.*)

2 **E. THE LWDA WAS NOTIFIED AND DOES NOT OBJECT**

3 On **May 2, 2024**, Plaintiff's counsel gave notice of the instant Settlement to the LWDA.
4 (Yaeckel Decl., ¶ 5).

5 On **2024**, Plaintiff's counsel uploaded via the LWDA's electronic filing portal copies
6 of this entire *ex parte* application, including the Notice, this supporting Memorandum, Declaration,
7 and Proposed Order & Judgment. (Yaeckel Decl., ¶7). To date, Plaintiff's counsel has not received
8 any response. *Id.*

9 To date, Plaintiff has not received a response from the LWDA regarding the proposed
10 settlement. If the LWDA contacts Plaintiff's counsel at any time prior to the hearing, Plaintiff's
11 counsel will provide an updated declaration to the Court. (Decl. Yaeckel ¶24).

12 **IV. CONCLUSION**

13 The parties respectfully request that the Court approve their proposed allocation of PAGA
14 penalties to the LWDA and the represented employees.

15 *In the alternative*, should the Court wish to have a noticed motion, Plaintiff asks for an order
16 shortening time to have the motion heard based on these unopposed moving papers.

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18 Dated: April x 2024

SULLIVAN & YAECKEL LAW GROUP, APC

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23 Ryan T. Kuhn
24 Attorneys for Plaintiff Plaintiff PATRICIA SOTO, in a
25 Representative capacity only, and on behalf of other
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