

Eric K. Yaeckel [CSB No. 274608]
yaeckel@sullivanlawgroupapc.com

Ryan T. Kuhn [CSB No. 324538]
ryan@sullivanlawgroupapc.com

SULLIVAN & YAECKEL LAW GROUP, APC
2330 Third Avenue
San Diego, California 92101
(619) 702-6760 * (619) 702-6761 FAX

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 REQUEST FOR PAGA SETTLEMENT APPROVAL

Date: June 4, 2024

Time: 8:30 a.m.

Dept.: C- 68

Judge: Hon. Richard S. Whitney

1 **I. SUMMARY OF MOTION**

2 This is a “Wage and Hour” representative action, under California’s Private Attorneys General
3 Act of 2004.

4 Plaintiff PATRICIA SOTO, in a Representative capacity only, and on behalf of other members
5 of the general public similarly situated (“Plaintiff”), respectfully submits the instant Points and
6 Authorities in support of her request for Approval of the PAGA Settlement.

7 This Request is **Unopposed**. The LWDA was timely notified (i.e. more than 30 days ago) of
8 this proposal, and does **not** object to the allocations.

9 **II. SUMMARY OF FACTS**

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

14 Following the exchange of discovery, analysis of numerous sets of time and wage data, a
15 mediation before Steve Pearl, Esq. and numerous follow up settlement discussions, the Parties reached
16 a proposed settlement that includes a payment of penalties to the LWDA. (Yaeckel Decl., ¶4).

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

23 On **May 2, 2024**, Plaintiff, uploaded via the LWDA’s electronic filing portal, all of the
24 proposed settlement terms, including the PAGA allocations. (Yaeckel Decl., ¶6).

25 On **June 3, 2024**, Plaintiff’s counsel uploaded via the LWDA’s electronic filing portal copies
26 of this entire *ex parte* application, including the Notice, this supporting Memorandum, Declaration,
27 and Proposed Order & Judgment. (Yaeckel Decl., ¶7). To date, Plaintiff’s counsel has not received any
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1 response. *Id.*

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

- 3 * **\$70,000** Attorneys' Fees
4 * **\$13,000.00** Costs of Litigation.
5 * **\$6,250.00** Administration Expenses
6 * **\$30,000.00** (\$3,000 rep enhancement + \$27,000 individual 1542 release)
7 * Sub-Total of **\$84,750.00** 75% (**\$63,562.50**) shall be assigned/paid to the
8 LWDA as penalties.
9 * The remaining 25% (**\$21,187.50**) in cash will be disbursed among all
10 employees based on work weeks employed during the PAGA period.(Yaeckel
11 Decl., ¶8).

12 Given the above, the average payment to each individual employee will be approximately
13 **\$43.24**. (*Id.*)

14 Further, there are no restrictions for any of the **490** employees to file individual actions, as the
15 settlement agreement only covers PAGA claims. (Yaeckel Decl., ¶9; **Exhibit 1**:§ III(5)).

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

24 **III. CONTROLLING AUTHORITY**

25 PAGA “authorizes an employee to bring an action for civil penalties on behalf of the state
26 against his or her employer for Labor Code violations committed against the employee and fellow
27 employees.” *Iskanian v. CLS Trans. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 360. “To compensate
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1 for the lack of[a]dequate financing of essential labor law enforcement functions,’ the California
2 legislature enacted PAGA to permit aggrieved employees to act as private attorneys general to collect
3 civil penalties for violations of the Labor Code.” *Sakkab v. Luxottica Retail N. Am., Inc.* (9th Cir.
4 2015) 803 F.3d 425, 430.

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

7 We therefore hold that **a trial court should evaluate a PAGA settlement to**
8 **determine whether it is fair, reasonable, and adequate in view of PAGA's**
9 **purposes to remediate present labor law violations, deter future ones, and to**
10 **maximize enforcement of state labor laws.** (*See Williams , supra ,* 3 Cal.5th at p.
11 546, 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.

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

16 A court may award a lesser amount than the maximum civil penalty amount if, based on the
17 facts and circumstances of the particular case, to do otherwise would result in an award that is unjust,
18 arbitrary and oppressive, or confiscatory. Lab. Code, § 2699(e)(2); *Amaral vs. Cintas Corp. No. 2*
19 *(2008)* 163 Cal.App.4th 1157, 1213-1214. *See e.g., Fleming v. Covidien Inc.*, 2011 WL 7563047, at
20 *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by 82%).

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

4 In deciding whether the settlement was “fair and adequate,” the *Court’s have* looked sought
5 how the parties divvied up the civil penalties under Section 2699(i) of the California Labor Code.
6 *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1076–77 (C.D. Cal.
7 2017). As the court felt the parties’ division of penalties was fair and adequate pursuant to the statute,
8 the court approved the settlement. *Id.*

9 **IV. DISCUSSION**

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

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

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

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

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

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

Specifically, Plaintiff alleges that she - and other employees - received “short,” “late,” or “missing” Meal Periods, including those documented within Defendant’s Time Records. (Decl. Yaeckel, ¶12). Plaintiff also challenged whether Defendant maintained lawful meal and rest periods. Plaintiff alleged she- and other employees -were not properly compensated due to Defendant’s failure to maintain accurate time records. (*Id.*) Finally, Plaintiff also challenged whether Defendant maintained lawful meal and rest period policies. (*Id.*)

C. ANALYSIS OF POTENTIAL LIABILITY, ON A REPRESENTATIVE BASIS

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

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

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

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

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

As the above factors exist in this case, it is the opinion of Plaintiff’s counsel that the settlement

1 is fair, adequate, and reasonable. Specifically, Plaintiff’s counsel’s understanding is that Defendant
2 has agreed to review its policies, and amend them to the extent they do not comply with California law.
3 (Decl. Yaeckel, ¶18).

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

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

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

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

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

25 The parties contend the settlement agreement amount is fair, adequate, and reasonable.
26 (Yaeckel Decl., ¶¶ 20, 23). Moreover, the PAGA settlement does not bar any employee from pursuing
27 their own individual Labor Code claims. (Yaeckel Decl., ¶9; **Exhibit 1**:§ III(5)). The release only
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1 applies to the PAGA claims for penalties, based upon the allegations in Plaintiff's operative
2 Complaint. (*Id.*)

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

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

6 On **June 3, 2024**, Plaintiff's counsel uploaded via the LWDA's electronic filing portal
7 copies of this entire *ex parte* application, including the Notice, this supporting Memorandum,
8 Declaration, and Proposed Order & Judgment. (Yaeckel Decl., ¶7). To date, Plaintiff's counsel has not
9 received any response. *Id.*

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

13 **IV. CONCLUSION**

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

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18 Dated: June 3, 2024

SULLIVAN & YAECKEL LAW GROUP, APC

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