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Attorneys for Plaintiff LaToya Dennis

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

LATOYA DENNIS,

Plaintiff,

v.

**GLOBAL THREAT SOLUTIONS, LLC;
and DOES 1-50, inclusive,**

Defendants.

Case No.: CGC-22-600950

**PLAINTIFF'S EX PARTE APPLICATION
FOR DISMISSAL; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF WILLIAM J. GORHAM,
III IN SUPPORT**

Date: March 9, 2023

Time: 11:00 a.m.

Dept.: 302

EX PARTE APPLICATION

Plaintiff LaToya Dennis ("Dennis") by this application requests the Court enter an order of dismissal in this case, following its approval of this settlement under the California Private Attorneys General Act of 2004 ("PAGA"), and proof of performance of the terms of the PAGA settlement are provided to the Court. Plaintiff further requests that the approval be granted *ex parte* based on the following:

1. The parties seek dismissal of the Sixth Cause of Action, with prejudice, with each side to bear its own fees and costs, conditioned on the Court approval of the PAGA settlement described below, and after performance by Defendant Global Threat Solutions ("GTS") of the terms of the settlement set forth in Exhibit A, the PAGA RELEASE OF CLAIMS.

1 2. Plaintiff LaToya Dennis (“Dennis”) worked as an hourly, non-exempt security
2 guard for Defendant GTS. During her employment, she alleged, that she and other GTS security
3 guards, were required to use their personal cell phones during work hours for business purposes.
4 They further allege that they were not reimbursed for this use of their phones.

5 3. Defendant GPS paid its employees with a rounding policy that rounded to the
6 nearest half hour of time. Plaintiff Dennis believed she was not paid for all time worked, and that
7 as derivative problem, alleged that she was not paid for all time due at the cessation of her
8 employment, and that her wage statements were not accurate. She also alleged that she was not
9 being provided wage statements.

10 4. Plaintiff LaToya Dennis filed two Notice of Violation letters to the Labor and
11 Workforce Development Agency (“LWDA”), one on May 13, 2022, and one on November 5,
12 2022 (collectively, “LWDA Notices”). The LWDA Notices identify potential violations of Labor
13 Code sections 2802, 226(a), 1197.1, 201, 202, 203.

14 5. As said, the Labor Code section 2802 claim was based on allegations that GTS
15 failed to reimburse its employees who were required to use their personal cell phones for work
16 purposes. The Labor Code section 226(a) claim was based allegations wage statements were not
17 furnished, and when furnished, were alleged inaccurate because of the above-referenced rounding
18 policy. The Labor Code sections 201, 202, and 203 claims, were also premised on the rounding
19 policy. Finally, the Labor Code section 1197.1 was based on GTS’ rounding policy.

20 6. Defendant and Plaintiff have exchanged discovery and mediated this dispute before
21 David Sarnoff, Esq., of Sarnoff Mediations.

22 7. Defendant GTS is represented by, and was represented during the discovery and
23 mediation, April S. Glatt, Esq., and Natalia G. Canas, Esq., of Chauvel & Glatt, LLP.

24 8. Through the discovery process, Plaintiff learned there are 60 employees, including
25 Plaintiff, were not reimbursed for this use of their personal phones, as alleged. Plaintiff further
26 learned that the average number of pay periods worked for these employees was 2.8. For the
27 majority of employees, they only worked once and many did not use their cell phones for work
28 purposes. Most employers reimburse such usage on a monthly basis (for cell phone bills typically

1 are on a monthly basis.) Therefore, Plaintiff assumed an average violation rate of 1.4 pay periods
2 for the 60 employees. Plaintiff also learned that Defendant GTS began complying with Labor
3 Code section 2802 and providing its security guards with a reasonable stipend for their use of their
4 cell phones for work purposes, beginning in September of 2022. Consequently, Plaintiff
5 concluded that the full value of the Labor Code section 2802 claims was \$8,400.00, as the penalty
6 is \$100 per employee per pay period (60 x 1.4 x \$100).

7 9. Plaintiff also learned through discovery and the mediation process that Defendant
8 did provide wage statements, that Plaintiff received wage statements and Plaintiff's wage
9 statements were available to her and Defendant's employees through an on-line portal, or if
10 requested, in hard copy. There is a viable dispute between Plaintiff and Defendant whether said
11 portal would be compliant in the context of a security guard who is required to use a phone, and
12 arguably has access to the wage statements on that basis. Plaintiff therefore concluded that the
13 failure to furnish claim faced a strong affirmative defense.

14 10. The remaining Labor Code claims under 1197.1, 201, 202, 203, and 226 (for
15 inaccurate wage statements) all turned on the viability of the rounding policy employed by GTS.
16 In examination of records, it was clear to Plaintiff's counsel that in some instances, the rounding
17 benefited the Plaintiff, and in other instances, it benefited GTS. If the rounding policy were
18 deemed "fair," none of the alleged derivative violations would have occurred. Further, with
19 respect to the 201, 202, and 203 violations, they at most would be a single violation as they
20 involve a single instance of a failure to pay the correct amount to an employee. In addition to the
21 uncertainty of the rounding policy, the law is uncertain whether a trial court can dismiss a PAGA
22 claim on the basis it is unmanageable, i.e.—requires unwieldy individualized assessment. This
23 issue is currently before the California Supreme Court in the case *Estrada v. Royalty Carpet Mills,*
24 *Inc.* 76 Cal.App.5th 685 (2022). Because of these factors, Plaintiff concluded that these derivative
25 claims faced many hurdles in order to succeed.

26 11. Consequently, and through and at the mediation on November 16, 2022, Plaintiff
27 and Defendant agreed to a settlement of the PAGA claims for \$10,000.00 through the PAGA
28 RELEASE OF CLAIMS (Exhibit A.)

12. For reasons set forth herein, Plaintiff respectfully request that the Court issue and Order dismissing this action as follows:

- a. Approving the PAGA settlement of \$10,000.00;
- b. Ordering distribution of the \$10,000.00 PAGA settlement as set forth in the proposed order affixed hereto; and,
- c. Dismissing the Sixth Cause of Action, with prejudice, with each side to bear its own fees and costs.

Respectfully submitted,

DATED: March 1, 2023

MAYALL HURLEY P.C.

By

WILLIAM J. GORHAM III

Attorneys for Plaintiff LaToya Dennis

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **A. THE COURT HAS AUTHORITY TO GRANT THE REQUESTED RELIEF.**

3 This Court is empowered to issue a stipulated order *ex parte*. See Cal. Rules of Court, Rule
4 3.1207(4). There are no due process concerns implicated where both sides have agreed on the
5 terms of the order, and the LWDA has been provided with notice of the settlement, all of which is
6 the case here. Gorham Declaration, ¶ 3.

7 **B. PLAINTIFF HAS SATISFIED RULE OF COURT 3.1200 *et seq.***

8 California Rules of Court, Rule 3.1201 requires that an *ex parte* application include: 1) an
9 application containing the case caption and stating the relief requested, 2) a declaration in support
10 making the factual showing required by Rule 3.1202(c), 3) a declaration based on personal
11 knowledge of the notice given under Rule 3.1204, 4) a memorandum, and 5) a proposed order. As
12 is apparent from this application and supporting documents, Plaintiff has complied with all of these
13 requirements.

14 **C. GOOD CAUSE EXISTS TO GRANT THE REQUESTED RELIEF.**

15 The \$10,000.00 PAGA settlement for which the parties seek approval is fair, under
16 circumstances set forth in the application. The settlement seeks the resolution of claims by
17 Plaintiff Dennis under the PAGA seeking civil penalties of all current and former non-exempt
18 employees for alleged: (1) minimum wage and overtime violations under Labor Code section
19 1197.1; (2) failure to issue accurate wage statements under Labor Code section 226; (3) failure to
20 pay wages due at the cessation of employment under Labor Code sections 201, 202, and 203, and
21 (4) failure to reimburse all reasonable business expenses pursuant to Labor Code section 2802.

22 At all times, Defendant GTS has disputed that there is any merit to the claims alleged in this
23 lawsuit, or that any amounts are due to the allegedly aggrieved employees. After investigation of
24 the claims through discovery, and through the mediation before David Sarnoff, Esq., of Sarnoff
25 Mediations, Plaintiff recommends approval of the PAGA settlement for the following reasons.

26 First, the only “clean” claim is for failure to reimburse business expenses for 60 employees,
27 who were required to use their cell phones for business purposes. The average number of pay
28 periods worked for these 60 employees was 2.8. Most employers reimburse such usage monthly

1 (for cell phone bills typically are on a monthly basis). Therefore, Plaintiff assumed an average
2 violation rate of 1.4 pay periods for the 60 employees. Consequently, Plaintiff concluded that the
3 full value of the Labor Code section 2802 claims was \$8,400.00, as the penalty is \$100 per
4 employee per pay period (60 x 1.4 x \$100). *See* Labor Code §2699(f).

5 Of course, even the potential full value of a “clean” PAGA claim is subject to reduction
6 pursuant to Labor Code section 2699(e)(2). In this regard, again through discovery, Plaintiff
7 learned that Defendant GTS began complying with Labor Code section 2802 and providing its
8 security guards with a stipend for their use of their cell phones for work purposes, beginning in
9 September of 2022. This is a factor that likely would influence a Court to reduce civil penalties.
10 Therefore, even the most solid claim Plaintiff brought under the PAGA with a top end value of
11 \$8,400, requires discounting.

12 Plaintiff presented two separate theories of wage statement violations under Labor Code
13 section 226, 1) the failure to issue, and 2) inaccurate wage statements. Regarding the former,
14 Defendant GTS provided evidence that wage statements were available through a portal system.
15 Case law is sparse in this regard. At least one case provides that opinion No. 2006.07.06 (July 6,
16 2006) of the Department of Labor Standards Enforcement on the issue should be followed. *Derum*
17 *v. Saks & Co.* 95 F.Supp.3d 1221, 1226. In sum, that opinion provides that an electronic
18 warehouse of wage statements is valid if the employer provides access to the system and
19 employees have the right to elect to receive a written wage statement. The uncertain application to
20 this case is whether a company that requires cell phone with internet capabilities complies with the
21 requirement of access provided by the employer. The risk here to Plaintiff is that a Court would
22 conclude that since the employer is being penalized for the above-referenced Labor Code section
23 2802 violation, the employer should get the benefit of the required use of the phone, i.e., that the
24 portal was available.

25 The remaining claims, inaccurate wage statements, failure to pay all time worked, and
26 failure to pay all wages due at cessation of employment, all are derivative claims that succeed or
27 fail based on Defendant GTS’ rounding policy. In this regard, it was clear through discovery that
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1 the rounding sometimes favored the employee, and sometimes GTS. In any event, if the rounding
2 policy is valid, all remaining claims would fail.

3 However, even if the policy is invalid, Plaintiff still faces the argument that the claims
4 require individualized analysis, and are unmanageable. That issue is currently before the
5 California Supreme Court in *Estrada v. Royalty Carpet Mills, Inc.* 76 Cal.App.5th 685 (2022). It
6 should also be noted that a successful Labor Code section 201, 202, and 203 claim is a one-time
7 violation, which is of limited maximum value.

8 For these reasons, Plaintiff concluded the \$10,000.00 PAGA settlement is fair and just.
9 Gorham Declaration, ¶5.

10 Respectfully submitted,

11 **DATED:** March 1, 2023

MAYALL HURLEY P.C.

12
13 By



14 WILLIAM J. GORHAM III

15 Attorneys for Plaintiff LaToya Dennis
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2 David Sarnoff, Esq., of Sarnoff Mediations, Plaintiff recommends approval of the
3 PAGA settlement for the following reasons.

- 4 c. The only “clean” claim is for failure to reimbursement business expenses for 60
5 employees, who were required to use their cell phones for business purposes. The
6 average number of pay periods worked for these 60 employees was 2.8 pay periods.
7 Most employers reimburse such usage on a monthly basis (for cell phone bills
8 typically are on a monthly basis.) Therefore, Plaintiff assumed an average violation
9 rate of 1.4 pay periods for the 60 employees. Consequently, Plaintiff concluded that
10 the full value of the Labor Code section 2802 claims was \$8,400.00, as the penalty is
11 \$100 per employee per pay period (60 x 1.4 x \$100). *See* Labor Code §2699(f).
- 12 d. Even the potential full value of a “clean” PAGA claim is subject to reduction pursuant
13 to Labor Code section 2699(e)(2). In this regard, again through discovery, Plaintiff
14 learned that Defendant GTS began complying with Labor Code section 2802, and
15 providing its security guards with a stipend for their use of their cell phones for work
16 purposes, beginning in September of 2022. This is a factor that likely would
17 influence a Court to reduce civil penalties. Therefore, even the most solid claim
18 Plaintiff brought under the PAGA with a top end value of \$8,400, requires
19 discounting.
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21 Code section 226, 1) the failure to issue, and 2) inaccurate wage statements. With
22 regard to the former, Defendant GTS provided evidence that wage statements were
23 available through a portal system. Case law is sparse in this regard. At least one case
24 provides that opinion No. 2006.07.06 (July 6, 2006) of the Department of Labor
25 Standards Enforcement on the issue should be followed. *Derum v. Saks & Co.* 95
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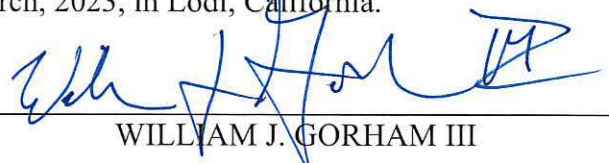
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2 complies with the requirement of access provided by the employer. The risk here to
3 Plaintiff is that a Court would conclude that since the employer is being penalized for
4 the above-referenced Labor Code section 2802 violation, the employer should get the
5 benefit of the required use of the phone, i.e., that the portal was available.

6 f. The remaining claims, inaccurate wage statements, failure to pay all time worked, and
7 failure to pay all wages due on the cessation of employment, all are derivative claims
8 that succeed or fail based on Defendant GTS' rounding policy. In this regard, it was
9 clear through discovery that the rounding sometimes favored the employee, and
10 sometimes GTS. In any event, if the rounding policy is valid, all remaining claims
11 would fail. However, even if the policy is invalid, Plaintiff still faces the argument
12 that the claims require individualized analysis, and are unmanageable. That issue is
13 currently before the California Supreme Court in *Estrada v. Royalty Carpet Mills, Inc.*
14 76 Cal.App.5th 685 (2022). It should also be noted that a successful Labor Code
15 section 201, 202, and 203 claim is a one-time violation, which is of limited maximum
16 value.

17 6. I have provided counsel for Defendant GTS, who is a signatory to the attached
18 proposed Order, with a draft copy of this application by email, and informed defense counsel that
19 my firm would appear on March 9, 2023 at 11:00 a.m., in Department 302 of the San Francisco
20 Superior Court to present this application. I have also caused service of this application to be made
21 on the Labor and Workforce Development Agency. Defense counsel has advised that Defendant
22 GTS will not contest the application.

23 7. I subsequently caused the service of this application and all supporting documents
24 by email, which service was agreed upon in advance by counsel for Defendant GTS.

25 I declare the foregoing is true and correct under penalty of perjury under the laws of the
26 State of California. Executed this 1st day of March, 2023, in Lodi, California.

27 
28 WILLIAM J. GORHAM III