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Attorneys for Plaintiff,
MONICA BRENA ARBALLO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO - CENTRAL DIVISION

MONICA BRENA ARBALLO, an
individual,

Plaintiff,

v.

VALLEY HO HOTELS INC., an
unknown business entity, and DOES 1
through 25, Inclusive,

Defendants.

Case No. 37-2018-00036850-CU-WT-CTL

**AMENDED DECLARATION OF JUSTIN
HEWGILL IN SUPPORT OF APPROVAL
OF SETTLEMENT**

Date: July 1, 2022

Time: 9:00 a.m.

Dept.: C-75

Judge: Hon. James Mangione

Complaint Filed: July 23, 2018

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I, Justin Hewgill, hereby declare and say:

1. I am an attorney duly licensed to practice in California and am a partner at Hewgill Cobb & Lockard, APC, counsel of record for Plaintiffs in this action. The following information is based upon my personal knowledge. If called upon to do so, I could and would competently testify to the truth of the matters stated herein.

I. NATURE OF THE CASE

2. This case is both an individual FEHA (disability discrimination) and wage and hour matter, and a PAGA action alleging that Plaintiff, and non-exempt, were subject to several systemic wage and hour violations including no rest breaks being provided, no meal breaks being provided, and employees were not provided sick leave as required by the Labor Code.

3. On June 12, 2018, Plaintiff submitted a letter (the “PAGA Letter”) to the Labor and Workforce Development Agency (“LWDA”) regarding her intention to pursue PAGA penalties against Defendants. On July 23, 2018, Plaintiff filed a civil action against Defendants entitled *Monica Brena Arballo v Valley Ho Hotels, Inc., et al.* (San Diego County Superior Court, Case No. 37-2018-00036850-CU-WT-CTL), and then filed a First Amended Complaint (9/14/2018) pursuing PAGA penalties against Defendants. (“PAGA Action”). The Parties have agreed to settle all claims outside of litigation.

4. Defendants denied these alleged facts and maintains that it made no violations of law.

5. The case has an aggrieved employee group of 235 employees with the respect to the PAGA case, amounting to all the non-exempt employees who worked for the Defendant during the period. However, this settlement is limited the 90 employees who worked between June 12, 2017, and September 30, 2017, the time period in which the Sick Leave violations existed within the PAGA period.

II. DISCOVERY AND INVESTIGATION

6. Discovery was conducted by both parties. Defendant propounded written discovery and deposed Plaintiff. Plaintiff received extensive informal discovery from Defendants, and interviewed dozens of members of the Aggrieved Employee group.

7. Parties conducted a deposition of the manager the respective hotel, a Person Most Knowledgeable, and the Plaintiff.

1 8. Parties conducted written discovery, including a Belaire-West Process and a sampling of
2 20% of relevant time and pay records of members of the Aggrieved Employee group.

3 9. During the deposition of the Person Most Knowledgeable, the PMK Ms. Woods stated
4 that the company had no policy for sick leave when she started working in human resources for
5 the Defendant and failed to provide proper notice of accrued sick leave as late 2017.

6 10. When Plaintiff reviewed the sample of pay and time records provided in discovery in this
7 matter it appears that Defendant did in fact create a policy of providing sick leave and providing
8 notice of accrued sick leave by the beginning October 2017.

9 **III. MEDIATION AND RESOLUTION**

10 11. After written discovery was conducted and parties could evaluate the others position, it
11 was mediated and resolved in front of Ms. Jobi Halper on November 10, 2020. This mediation
12 was sincere, adversarial, and non-collusive. The mediation was initially unsuccessful. This was
13 at least in part due the financial stress caused on Defendant by the COVID-19 pandemic.
14 However, counsel continued to negotiate as the hospitality industry was able to at least in part
15 recover. These negotiations resulted in ultimately coming to terms of resolution.

16 12. The fully executed SETTLEMENT AGREEMENT OF PAGA CLAIMS (hereafter
17 “Settlement”) is attached as exhibit A.

18 **IV. NOTIFICATION TO THE LABOR AND WORKFORCE DEVELOPMENT** 19 **AGENCY, & THE AGENCY’S INTERVENTION INTO THE SETTLEMENT** 20 **IN THIS MATTER.**

21 13. Plaintiffs, through my office, have provided, the terms of the proposed settlement to the
22 Labor and Workforce Development Agency via the Agency’s web portal as required by the
23 Private Attorney General Act, (Cal. Labor Code, § 2699(l)) on June 21, 2022.

24 14. On June 21, 2022 I provide, the SETTLEMENT AGREEMENT OF PAGA CLAIMS,
25 the Proposed ORDER GRANTING APPROVAL OF SETTLEMENT; Plaintiff’s motion papers
26 seeking approval of this settlement, and this Declaration of Justin Hewgill.

27 15. However, the LWDA intervened in this settlement. Through Ms. Patricia Kelly, the
28 Agency expressed concern that the release in this matter included all items noticed (PAGA letter
and Complaint) through the date of final order, but only resolved the limited issue and period
related to failure to have a sick leave policy. I explained to Ms. Kelly, that this was due to the

1 overlapping *Herlihy* matter. Ms. Kelly maintained that despite the *Herlihy* matter, our release
2 going past the date of release of the *Herlihy* matter was releasing “uninvestigated claims”. Ms.
3 Kelly and I discussed and agreed that limiting the release to through June 27, 2019 (the date of
4 the final order in the *Herlihy* matter) would satisfy the State’s concerns, and her office would not
5 object.

6 16. Both the state, through Ms. Kelly, and Defendant has agreed to the new release period of
7 June 12, 2017, up to and including the June 27, 2019.

8 17. Along with this Amended Declaration, my office is filing an Amended [Proposed] Order,
9 which reflects the release period of June 12, 2017 through June 27, 2019. These items were also
10 provided to the LWDA through their web-portal on June. 28, 2022.

11 **V. QUALIFICATIONS OF COUNSEL**

12 18. I have a bachelor’s degree from the University of California, Riverside both a BA in
13 Political Science and a BA in Fine Art. I graduated with a Juris Doctorate from the University of
14 California, Berkeley School of Law (formally Boalt Hall), in May of 2008.

15 19. I have been licensed to practice law, and have practiced law in the State of California
16 since December, 2008. In 2015, my partners and I started the law firm, which is now styled
17 Hewgill Cobb Lockard, APC (formally the Law Office of Hewgill and Cobb). I am currently an
18 equity partner in this firm. Since starting this firm and prior to that, I have devoted my practice to
19 employment law both wage and hour Class Action and Private Attorney General Act litigation
20 and FEHA matters.

21 20. I successfully represented plaintiffs in wage and hour Class Actions in the following
22 matters in the Superior Court for the County of San Diego: 37-2016-00036639-CU-OE-CTL,
23 GATES vs MISSION BAY SPORTS CENTER; 37-2017-00012951-CU-OE-CT,
24 BUCKHANNON vs STONES; (37-2019-00013863-CU-OE-CTL, ASPEYTIA V MA
25 MORTENSON COMPANY. My office currently represents plaintiffs in the wage and hour
26 Class Action 37-2019-00011626-CU-OE-CTL, GUZMAN V ALLAN COMPANY). My office
27 represented intervening plaintiffs, and successfully amended the settlement agreement in 3:16-
28 cv-02162-JLS-NLS, NUNEZ v. BAE SYSTEMS SAN DIEGO SHIP REPAIR INC. Finally, my
office also currently represents plaintiffs or successfully represented plaintiffs in the following
collective action, Private Attorney General Act (PAGA) matters: 37-2018-00037315-CU-OE-

CTL, EBBA vs SHARP HEALTHCARE; 37-2018-00043367-CU-WT-CTL, HERNANDEZ vs CALIFORNIA GAS TRANSPORT INC; and MCC1800266, HUERTA vs VIN HOSPITALITY; 37-2019-00034623-CU-WT-CTL AGUIRRE vs 860 GARNET OPERATIONS; 37-2020-00022617 MARTINEZ vs OMNI HOTELS MANAGEMENT; 37-2020-00033834-CU-OE-CTL, CARBAUGH vs HEALTH IQ; GARCIA vs LUXOTTICA RETAIL NORTH AMERICA; 20-CV-1241-AJB-WVG SCALICE vs SALES PARTNERSHIP, INC.; 37-2020-0032941-CU-OE-CTL SCHLUTER vs BELLA BABY SOCAL, LLC.

21. My billable rate is \$625.00 an hour.

VI. FEES ARE REASONABLE

22. The retainer agreement between my firm, co-counsel and named Plaintiffs calls for a 40% contingency fee. However, in the interest of justice we have not sought that full amount here.

23. Here Plaintiff attributes \$48,088.75, which amounts 35% of the total settlement, but Plaintiffs only attribute a small portion of these fees to the PAGA matter. Plaintiff's counsel has not provided a lodestar estimate, but will do so, if asked to do so by the Court.

24. The Parties have conducted significant investigation of the facts and law relating to this dispute. Such investigation has included, inter alia, the production and analysis of Defendant's employee handbooks and timekeeping, and sick leave policies, analysis of Plaintiff's timekeeping and pay records, and a full day of deposition testimony by Plaintiff. Plaintiff conducted multiple depositions and participated in a full day of mediation. Plaintiff opposed a Motion for Summary Judgement.

25. Plaintiff's counsel interviewed numerous members of the Aggrieved Employee group.

VII. COSTS INCURRED

26. Plaintiff has spent over \$10,400.82 in costs for this matter. Plaintiff only attributes \$3,551.25 of the costs to the PAGA matter. This amount corresponds with the costs of an economist expert utilized exclusively for the PAGA portion of this matter.

VIII. RELATED CASE SETTLED BEFORE THIS MATTER.

27. A prior PAGA case *Herlihy v Valley Ho Hotels, Inc.* (San Diego Superior Court 37-2017-00036606-CU-OE-CTL) resolved all wage and hour disputes this matter raised in Plaintiff's PAGA Notice and Complaint, with the exception of the claims related to sick leave. See the

1 Court's Minute Order ruling on Defendant's MSJ seeking to dismiss this action due to the
2 *Herlihy* settlement, at ROA # 73 and attached here as Exhibit B. Plaintiff took the position and
3 the Court agreed that the *Herlihy* settlement precluded further litigation on all violations except
4 for the sick leave violations as that was not noticed or plead in the *Herlihy* matter.

5 I declare under penalty of perjury pursuant to the laws of the State of California that the
6 foregoing is true and correct and that this declaration was executed on June 28, 2022, at San
7 Diego, California.

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10 _____
Justin Hewgill