

Daniel V. Santiago, Esq. (SBN 206532)
LAW OFFICES OF DANIEL V. SANTIAGO, P.C.
355 South Grand Avenue, Suite 2450
Los Angeles, California 90071
Phone: (760) 652-9801
E-mail: dvs@dvslawoffices.com
Attorney for the Plaintiff, Anaee J. Zuniga

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
VAN NUYS COURTHOUSE EAST**

ANAEE J. ZUNIGA, individually and as
representative of the State of California on
behalf of all aggrieved employees,

Plaintiff,

v.

DR. PATRICIA L. WALTERS, an individual
d/b/a TARZANA WOUND CARE CENTER,
and DOES 1 through 20, inclusive,

Defendants.

Case No. 22VECV01944

**DECLARATION OF DANIEL V.
SANTIAGO IN SUPPORT OF
PLAINTIFF'S EX PARTE
APPLICATION FOR AN ORDER (1)
APPROVING THE SETTLEMENT OF
PLAINTIFF'S INDIVIDUAL PAGA
CLAIMS AGAINST THE DEFENDANT
AND DISMISSING THOSE PAGA
CLAIMS WITH PREJUDICE AND (2)
DISMISSING PLAINTIFF'S PAGA
CLAIMS ON BEHALF OF THE OTHER
ALLEGEDLY AGGRIEVED
EMPLOYEES WITHOUT PREJUDICE**

Date of Ex Parte Hearing: September 18, 2023
Time of Ex Parte Hearing: 8:30 a.m.
Location of Ex Parte Hearing: Dept. W of Los
Angeles Superior Court, Van Nuys
Courthouse East
Complaint Filed: November 9, 2022

I, Daniel V. Santiago, declare:

1. I am a member in good standing of the State Bar of California (California Bar No. 206532). I am counsel for the Plaintiff, Anaee J. Zuniga, in the above-captioned action against the Defendant, Dr. Patricia L. Walters, an individual d/b/a Tarzana Wound Care Center, currently

1 pending in the Superior Court of the State of California, County of Los Angeles, Van Nuys
2 Courthouse East, Case No. 22VECV01944 (hereinafter, "the Action").

3 2. I respectfully submit this declaration in support of the Plaintiff's Ex Parte
4 Application for an Order Approving the Settlement of Plaintiff's Individual PAGA Claims Against
5 the Defendant and (2) Dismissing Those PAGA Claims With Prejudice ("Plaintiff's Ex Parte
6 Application"). Therein, Plaintiff respectfully requests in accordance with the parties' prior
7 agreement that the Court enter an Order: (1) approving the settlement of the Plaintiff's individual
8 claims against the Defendant on behalf of herself under the Private Attorneys General Act of 2004
9 ("PAGA"), California Labor Code ("Labor Code") §2698 et seq. (hereinafter, "Plaintiff's individual
10 PAGA claims"); (2) dismissing *with* prejudice Plaintiff's individual PAGA claims against the
11 Defendant; (3) dismissing *with* prejudice Plaintiff's non-PAGA claims against the Defendant; and
12 (4) dismissing *without* prejudice Plaintiff's PAGA claims against the Defendant on behalf of the
13 other allegedly aggrieved employees of the Defendant.

14 3. Plaintiff's claims in the Action arise from the Defendant's alleged failures, *inter alia*:
15 (a) to authorize and permit Plaintiff and the aggrieved employees to take rest periods under IWC
16 Wage Order No. 4-2001, §12(A), and to pay them rest period premiums in violation of IWC Wage
17 Order No. 4-2001, §12(B) and Labor Code §226.7(c); (b) to provide Plaintiff and the aggrieved
18 employees with meal periods under Labor Code §512(a) and IWC Wage Order No. 4-2001, §11(A)
19 and to pay them meal period premiums in violation of Labor Code §226.7(c) and IWC Wage Order
20 No. 4-2001, §11(B); (c) to pay Plaintiff and the aggrieved employees all wages due and owing
21 during their employment in violation of Labor Code §§204(a), 218.6, 1194(a) and 1197 and IWC
22 Wage Order No. 4-2001, §§3 and 4; (d) to timely pay Plaintiff and the aggrieved employees all
23 wages due during their employment in violation of Labor Code §204(a); (e) to timely pay all wages
24 due upon termination of the employment of Plaintiff and the aggrieved employees who are no
25 longer employed by DR. WALTERS in violation of Labor Code §§201–203; and (f) to provide
26 Plaintiff and the aggrieved employees with suitable resting facilities in violation of IWC Wage
27 Order No. 4-2001, §13.

4. As used in the Plaintiff's Complaint, the term "aggrieved employees" consists of all California residents who were employed by the Defendant as hourly rate employees and worked at the Tarzana Wound Care Center in Tarzana, California, at any time within one year preceding the filing of the Complaint up to and through the time of trial for this matter (hereinafter referred to as "the liability period"). Plaintiff alleges upon information and belief that there are approximately 5 aggrieved employees, as defined.

5. Defendant has filed an Answer to the Complaint that contained a general denial of the material allegations in the Complaint and asserted various affirmative defenses. Additionally, I am informed that the Defendant denies any violation of the Labor Code, IWC Wage Order No. 4-2001, or any other wrongdoing.

6. To date, the Court has not scheduled a Final Status Conference or trial date in the Action. If the Court grants the relief requested in Plaintiff's Ex Parte Application, the Plaintiff would respectfully request that the Court vacate any and all dates on its calendar (including the Order to Show Cause Re: Settlement currently scheduled for September 19, 2023, at 8:30 a.m. in Department W of the Van Nuys Courthouse East).

7. The parties recently agreed to settle all of the Plaintiff's individual claims against the Defendant in the Action (including Plaintiff's PAGA claims on behalf of herself referred to herein as "Plaintiff's individual PAGA claims") for Four Thousand Seven Hundred Fifty Dollars (\$4,750). In connection therewith, the Parties have executed a Confidential Settlement Agreement and Mutual Release of All Claims ("Settlement Agreement"). The parties have agreed to the disclosures of the terms of the Settlement Agreement set forth in this declaration in order to facilitate the Court's granting of the relief requested herein.

8. The Settlement Agreement is expressly conditioned upon, *inter alia*, the Los Angeles County Superior Court's entry of an Order: (a) approving the settlement of Plaintiff's individual PAGA claims against the Defendant; (b) dismissing *with* prejudice Plaintiff's individual PAGA claims against the Defendant; (c) dismissing *with* prejudice Plaintiff's non-PAGA claims against the Defendant; and (d) dismissing *without* prejudice Plaintiff's representative PAGA claims against the

1 Defendant on behalf of the other allegedly aggrieved employees of the Defendant (such Order is
2 hereinafter referred to as "Dismissal Order").

3 9. The terms of the Settlement Agreement include, *inter alia*:

4 (a) The parties wish to avoid the expense of further proceedings and desire to resolve
5 any and all claims that actually were alleged, or that could have been alleged, in the Action, and
6 Defendant denies and disputes all of Plaintiffs' alleged causes of action and allegations in the
7 Action.

8 (b) The Gross Settlement Amount of \$4,750 is to be distributed as follows: [i] \$500 is to
9 be paid by the Defendant in connection with the settlement of the Plaintiff's individual PAGA
10 claims against the Defendant (more specifically, that sum consists of \$375 to be paid to the Labor
11 and Workforce Development Agency ["LWDA"] and \$125 to be paid to the Plaintiff in connection
12 with the settlement of Plaintiff's individual PAGA claims against the Defendant in accordance with
13 Labor Code §2699(i)); and [ii] \$4,250 is to be paid by the Defendant in connection with the
14 settlement of the Plaintiff's individual non-PAGA claims against the Defendant (more specifically,
15 that sum consists of: \$50.00, less withholdings and deductions, to be paid to the Plaintiff in
16 settlement of her individual wage-related claims against the Defendant; \$2,200, without any
17 withholding or deductions, to be paid to the Plaintiff in settlement of her individual non-wage-
18 related claims against the Defendant; and \$2,250 to be paid to Plaintiff's counsel as attorney's fees
19 in connection with the prosecution of Plaintiff's individual non-PAGA claims against the
20 Defendant).

21 10. I respectfully submit that the proposed settlement in the Action is fair and reasonable
22 in light of the following factors, among others: (a) any settlement, including the proposed settlement
23 in the Action, should take into consideration the time, inconvenience and uncertainty of trial that are
24 avoided by the settlement; (b) under Labor Code §2699(i), the aggrieved employees are entitled to
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1 receive only 25% of any PAGA settlement with the remaining 75% to be paid to the LWDA; and
2 (c) Plaintiff contends that the penalties recoverable with regard to her primary individual PAGA
3 claims as outlined below are not substantially greater than the gross settlement amount of the
4 proposed settlement of her individual PAGA claims (\$500).

5 11. Plaintiff estimates that the maximum civil penalties recoverable with regard to her
6 primary individual PAGA claims (i.e., the Defendant's alleged failures to provide the Plaintiff with
7 the legally requisite meal and rest periods and to pay the legally requisite meal and rest period
8 premiums) is approximately \$4,500 calculated as follows:

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Nature of Claim	Type Of Claim	Amount	Description
PAGA Claim o/b/o Plaintiff	PAGA Penalty For Meal Period Violations	\$2,250	\$50 for the initial pay period + \$100 for each of the subsequent 22 pay periods = \$2,250 (25% payable to Plaintiff and 75% payable to the LWDA)
PAGA Claim o/b/o Plaintiff	PAGA Penalty For Rest Period Violations	\$2,250	\$50 for the initial pay period + \$100 for each of the subsequent 22 pay periods = \$2,250 (25% payable to Plaintiff and 75% payable to the LWDA)
Total PAGA Penalties Recoverable o/b/o Plaintiff for the Above-Listed Claims		\$4,500	

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20 Of note, I am informed that the Defendant does not concur or assent to the factual allegations
21 underlying Plaintiff's claimed civil penalties.

22 12. I respectfully submit that, for settlement purposes, it is reasonable to discount
23 Plaintiff's estimate of the civil penalties potentially recoverable with regard to her primary
24 individual PAGA claims at issue (\$4,500) by 50% to reflect the benefits of avoiding the delays
25 associated with continued litigation and by another 50% to reflect the inherent uncertainty of
26 obtaining a favorable verdict at trial. The resulting figure after these discounts is \$1,125.

1 13. I respectfully submit that, for settlement purposes, it is reasonable to further discount
2 the resulting figure outlined above (\$1,125) given the Court's wide discretion to reduce the civil
3 penalties potentially recoverable by Plaintiff with regard to her individual PAGA claims.

4 14. I submitted copies of Plaintiff's Notice of Ex Parte Application, Plaintiff's Ex Parte
5 Application, this Declaration of Daniel V. Santiago in Support of Plaintiff's Ex Parte Application,
6 and the [Proposed] Order Granting Plaintiff's Ex Parte Application to the LWDA (via online filing
7 with the LWDA) contemporaneously with the filing of those papers. A true and correct copy of the
8 email I received from the DIR PAGA Unit on behalf of the LWDA confirming my submission of
9 those papers to the LWDA earlier that day is attached hereto as Exhibit 1.

10 15. I do not anticipate receiving any objection or other communication from the LWDA
11 regarding the relief requested in Plaintiff's Ex Parte Application. I will advise the Court whether I
12 have received any such objection or other communication from the LWDA during the hearing on
13 Plaintiff's Ex Parte Application.

14 16. I respectfully submit that the relief requested in Plaintiff's Ex Parte Application is
15 warranted in light of the following factors, among others: (1) the parties are prepared to
16 consummate the aforementioned settlement immediately after the Court approves of the settlement
17 of Plaintiff's individual PAGA claims against the Defendant, dismisses with prejudice Plaintiff's
18 individual PAGA claims against the Defendant, and further dismisses without prejudice Plaintiff's
19 PAGA claims against the Defendant on behalf of the other allegedly aggrieved employees of the
20 Defendant; and (2) there is no just reason to delay the consummation of the aforementioned
21 settlement.

22 17. Notice to the other aggrieved employees of the proposed dismissals described herein
23 is not required because, among other reasons, this is not a putative class action, notice of this
24 representative action has not been required to be provided (and has not been provided) to the other
25 aggrieved employees, and the proposed dismissal described herein will not prejudice any of the
26 other aggrieved employees. *See, e.g., Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1122
27 (9th Cir. 2014) ("PAGA has no notice requirements for unnamed aggrieved employees, nor may
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1 such employees opt out of a PAGA action); *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110,
2 1134 (N.D. Cal. 2016) ("PAGA does not require class actions procedures, such as notice and opt-
3 out rights."); and *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 134077, at *5 (N.D. Cal. Apr.
4 2, 2010) ("Unnamed employees need not be given notice of the PAGA claim, nor do they have the
5 ability to opt-out of the representative PAGA claim.")

6 18. The following factors, among others, support the conclusion that the proposed
7 dismissal described herein will not prejudice any of the other aggrieved employees: (a) the
8 *Baumann*, *O'Connor* and *Ochoa-Hernandez* cases cited above support the propositions that
9 unnamed aggrieved employees need not be given notice of the PAGA claim and have no right to
10 opt-out of the PAGA claim; and (b) I am unaware of any other aggrieved employees' reliance on
11 the Plaintiff to prosecute this representative action for his or her benefit (e.g., I have had no
12 communication with any such other allegedly aggrieved employee).

13 19. I respectfully submit that my background and experience weigh heavily in favor of
14 the Court's granting the relief requested in Plaintiff's Ex Parte Application.

15 20. As to my educational background, I am a graduate of The University of Michigan
16 Law School in Ann Arbor, Michigan (J.D. in 1996) and Northwestern University in Evanston,
17 Illinois (double-majors in Economics and Political Science in 1993).

18 21. As to my professional background, I have more than 25 years of experience handling
19 a wide variety of complex civil litigation and substantial experience handling wage and hour
20 litigation including wage and hour class actions, as described more fully below.

21 22. I have had substantial experience prosecuting class actions including, *inter alia*:
22 *Brian R. Maston et al. v. Prima Pizza, Inc. et al.*, Los Angeles County Superior Court, Case No.
23 BC508046 (wage and hour class action settlement – final approval granted); *Neerav Jadeja et al. v.*
24 *American Para Professional Systems, Inc. et al.*, San Diego Superior Court, Case No. 37-2013-
25 00040592-CU-MT-CTL (identity theft class action settlement – final approval granted); *Anyah M.*
26 *Jagne v. Williams-Sonoma, Inc.*, Sacramento Superior Court, Case No. 34-2017-00212574 (wage
27 and hour class action settlement – final approval granted); *Christopher L. Battle v. Fastrucking.com*,

1 *LLC*, San Diego Superior Court, Case No. 37-2014-00020611-CU-OE-CTL (wage and hour class
2 action settlement – final approval granted); and *Alejandro Hernandez v. Golden State FC, LLC*, San
3 Diego Superior Court, Case No. 37-2018-00025550-CU-OE-CTL (wage and hour class action
4 settlement – final approval granted).

5 23. I provided Defendant's counsel with copies of this Ex Parte Application and related
6 papers via U.S. mail and e-mail on September 11, 2023. In addition, the parties previously executed
7 a Stipulation and [Proposed] Order requesting that the Court enter the relief requested in Plaintiff's
8 Ex Parte Application. Accordingly, I am informed and believe that Defendant's counsel does not
9 oppose the relief requested in Plaintiff's Ex Parte Application.

10 I declare under penalty of perjury under the laws of California that the foregoing is true and
11 correct, and that this declaration was executed on September 11, 2023.

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13 Daniel V. Santiago
14 Attorney for Plaintiff, Anace J. Zuniga
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