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

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

14 Plaintiff,

15 v.

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

19 Defendants.

Case No. 22VECV01944

**MEMORANDUM OF POINTS AND
AUTHORITIES 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

23 The Plaintiff, Anaee J. Zuniga, by and through her undersigned counsel, respectfully
24 submits this Memorandum of Points and Authorities in support of her Ex Parte Application for an
25 Order: (1) approving the settlement of her individual claims against the Defendant, Dr. Patricia L.
26 Walters, on behalf of herself under the Private Attorneys General Act of 2004 ("PAGA"),
27 California Labor Code ("Labor Code") §2698 et seq. (hereinafter, "Plaintiff's individual PAGA
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claims”); (2) dismissing *with* prejudice Plaintiff’s individual PAGA claims against the Defendant; (3) dismissing *with* prejudice Plaintiff’s non-PAGA claims against the Defendant; and (4) dismissing *without* prejudice Plaintiff’s PAGA claims against the Defendant on behalf of other aggrieved employees.

I. SUMMARY OF THE CLAIMS AT ISSUE

Plaintiff’s claims in the Action arise from the Defendant’s alleged failures, *inter alia*: (a) to authorize and permit Plaintiff and the aggrieved employees to take rest periods under IWC Wage Order No. 4-2001, §12(A), and to pay them rest period premiums in violation of IWC Wage Order No. 4-2001, §12(B) and Labor Code §226.7(c); (b) to provide Plaintiff and the aggrieved employees with meal periods under Labor Code §512(a) and IWC Wage Order No. 4-2001, §11(A) and to pay them meal period premiums in violation of Labor Code §226.7(c) and IWC Wage Order No. 4-2001, §11(B); (c) to pay Plaintiff and the aggrieved employees all wages due and owing during their employment in violation of Labor Code §§204(a), 218.6, 1194(a) and 1197 and IWC Wage Order No. 4-2001, §§3 and 4; (d) to timely pay Plaintiff and the aggrieved employees all wages due during their employment in violation of Labor Code §204(a); (e) to timely pay all wages due upon termination of the employment of Plaintiff and the aggrieved employees who are no longer employed by Dr. Walters in violation of Labor Code §§201–203; and (f) to provide Plaintiff and the aggrieved employees with suitable resting facilities in violation of IWC Wage Order No. 4-2001, §13. (Declaration of Daniel V. Santiago [“DVS Decl.”] filed under separate cover, ¶3).

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”). (DVS Decl., ¶4). Plaintiff alleges upon information and belief that there are approximately 5 aggrieved employees, as defined. (DVS Decl., ¶4).

II. STATUS OF THE LITIGATION

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. (DVS Decl., ¶5).

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1 Additionally, Defendant denies any violation of the Labor Code, IWC Wage Order No. 4-2001, or
2 any other wrongdoing. (DVS Decl., ¶5).

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

9 **III. PROPOSED SETTLEMENT OF PLAINTIFF'S INDIVIDUAL PAGA CLAIMS**

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

17 The Settlement Agreement is expressly conditioned upon, *inter alia*, the Los Angeles
18 County Superior Court's entry of an Order: (a) approving the settlement of Plaintiff's individual
19 PAGA claims against the Defendant; (b) dismissing *with* prejudice Plaintiff's individual PAGA
20 claims against the Defendant; (c) dismissing *with* prejudice Plaintiff's non-PAGA claims against the
21 Defendant; and (d) dismissing *without* prejudice Plaintiff's representative PAGA claims against the
22 Defendant on behalf of the other allegedly aggrieved employees of the Defendant (such Order is
23 hereinafter referred to as "Dismissal Order"). (DVS Decl., ¶8).

24 The terms of the Settlement Agreement include, *inter alia*:

25 (a) The parties wish to avoid the expense of further proceedings and desire to resolve
26 any and all claims that actually were alleged, or that could have been alleged, in the Action, and
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1 Defendant denies and disputes all of Plaintiffs' alleged causes of action and allegations in the
2 Action. (DVS Decl., ¶9).

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

16 The proposed settlement in the Action is fair and reasonable in light of the following factors,
17 among others: (a) any settlement, including the proposed settlement in the Action, should take into
18 consideration the time, inconvenience and uncertainty of trial that are avoided by the settlement; (b)
19 under Labor Code §2699(i), the aggrieved employees are entitled to receive only 25% of any PAGA
20 settlement with the remaining 75% to be paid to the LWDA; and (c) Plaintiff contends that the
21 penalties recoverable with regard to her primary individual PAGA claims as outlined below are not
22 substantially greater than the gross settlement amount of the proposed settlement of her individual
23 PAGA claims (\$500). (DVS Decl., ¶¶10-13).

24 **IV. PLAINTIFF REQUESTS THE COURT'S APPROVAL OF THE PROPOSED**
25 **SETTLEMENT OF HER INDIVIDUAL PAGA CLAIMS, AS REQUIRED.**
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1 1. Plaintiff requests the Court's approval of the proposed settlement of her individual
2 PAGA claims against the Defendants in accordance with Labor Code §2699(1)(2) which requires
3 Court approval for every PAGA settlement.¹ Labor Code §2699(1)(2) further requires that the
4 proposed PAGA settlement be submitted to the Labor and Workforce Development Agency
5 ("LWDA") at the same time that it is submitted to the Court. Accordingly, Plaintiff's counsel has
6 submitted copies of Plaintiff's Notice of Ex Parte Application, Plaintiff's Ex Parte Application, the
7 Declaration of Daniel V. Santiago in Support of Plaintiff's Ex Parte Application, and the [Proposed]
8 Order Granting Plaintiff's Ex Parte Application to the LWDA (via online filing with the LWDA)
9 contemporaneously with the filing of those papers. (DVS Decl., ¶14).

10 Plaintiff's counsel does not anticipate receiving any objection or other communication from
11 the LWDA regarding the relief requested in Plaintiff's Ex Parte Application. (DVS Decl., ¶15).
12 Plaintiff's counsel will advise the Court whether he has received any such objection or other
13 communication from the LWDA during the hearing on Plaintiff's Ex Parte Application. (DVS
14 Decl., ¶15).

15 **V. NECESSITY FOR EX PARTE APPLICATION**

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

23 Of note, notice to the other aggrieved employees of the proposed dismissals described herein
24 is not required because, among other reasons, this is not a putative class action, notice of this
25 representative action has not been required to be provided to (and has not been provided to) the
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27 ¹ Labor Code §2699(1)(2) provides that "[t]he superior court shall review and approve any settlement of any
28 civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same
time that it is submitted to the court."

1 other aggrieved employees, and the proposed dismissals described herein will not prejudice any of
2 the other aggrieved employees. (DVS Decl., ¶17). *See, e.g., Baumann v. Chase Inv. Servs. Corp.*,
3 747 F.3d 1117, 1122 (9th Cir. 2014) (“PAGA has no notice requirements for unnamed aggrieved
4 employees, nor may such employees opt out of a PAGA action); *O’Connor v. Uber Techs., Inc.*,
5 201 F. Supp. 3d 1110, 1134 (N.D. Cal. 2016) (“PAGA does not require class actions procedures,
6 such as notice and opt-out rights.”); and *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL
7 134077, at *5 (N.D. Cal. Apr. 2, 2010) (“Unnamed employees need not be given notice of the
8 PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.”)

9 The following factors, among others, support the conclusion that the proposed dismissals
10 described herein will not prejudice any of the other aggrieved employees: (a) the *Baumann*,
11 *O’Connor* and *Ochoa-Hernandez* cases cited above support the propositions that unnamed
12 aggrieved employees need not be given notice of the PAGA claim and have no right to opt-out of
13 the PAGA claim; and (b) Plaintiff’s counsel is unaware of any other aggrieved employees’ reliance
14 on the Plaintiff to prosecute this representative action for his or her benefit. (DVS Decl., ¶18).

15 **VI. REQUESTED RELIEF**

16 For the foregoing reasons, Plaintiff respectfully requests that the Court enter an Order: (1)
17 approving the settlement of Plaintiff’s individual PAGA claims against the Defendant and the
18 corresponding payments of \$375 to the LWDA and \$125 to Plaintiff; (2) dismissing *with* prejudice
19 Plaintiff’s individual PAGA claims against the Defendant; (3) dismissing *with* prejudice Plaintiff’s
20 non-PAGA claims against the Defendant; (4) dismissing *without* prejudice Plaintiff’s PAGA claims
21 against the Defendant on behalf of other aggrieved employees; and (4) granting such additional
22 relief as the Court deems just and appropriate. Plaintiff respectfully files under separate cover a
23 [Proposed] Order reflecting the relief requested herein.

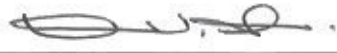
24 Plaintiff’s counsel provided Defendant’s counsel with copies of this Ex Parte Application
25 and related papers via U.S. mail and e-mail on September 11, 2023. (DVS Decl., ¶23). In addition,
26 the parties previously executed a Stipulation and [Proposed] Order requesting that the Court enter
27 the relief requested in Plaintiff’s Ex Parte Application. (DVS Decl., ¶23). Accordingly, Plaintiff’s
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1 counsel is informed and believes that Defendant's counsel does not oppose the relief requested in
2 Plaintiff's Ex Parte Application. (DVS Decl., ¶23).

3 Dated: September 11, 2023

LAW OFFICES OF DANIEL V. SANTIAGO, P.C.

4 By:


Daniel V. Santiago, Esq.