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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID ANEAS, NICOLAS GOURDY,

Plaintiff,

-vs-

SCOTT ARTHUR MCKINNEY, AGUSTIN
ARRASTIO, SPY ROCK GARDENS LLC,

Defendants.

Case No. 3:23-cv-00674-SK

DECLARATION OF CARLOS JATO
IN SUPPORT OF MOTION TO (1) SET
ASIDE ORDER OF CONDITIONAL
DISMISSAL (2) TO APPROVE THE
PAGA SETTLEMENT PURSUANT TO
CALIFORNIA LABOR CODE SEC.
2699 ET SEQ. AND (3) SET
CONFIRMATION HEARING

Date: December 11, 2023
Time : 9:00am
Hon. Sallie Kim
Courtroom C, 15th Floor

I, CARLOS JATO, declare and state as follows:

1. I am the attorney for plaintiffs NICOLAS GOURDY and DAVID ANEAS (Hereinafter Plaintiffs) in the case of *Aneas et al v. McKinney et al 23-CV-00674-SK*.
2. The plaintiffs have alleged a PAGA claim in their complaint. I make this declaration in support of plaintiffs' Motion to (1) Revert the Dismissal Without Prejudice; (2) for an Order Approving the PAGA Settlement, and (3) to Scheduled a Confirmation Hearing on the settlement.
3. I have been an attorney in California for over a decade. Also, I have been an attorney in good standing with the Spanish Bar Association ("Ilustre Colegio de Abogados de Madrid") for over 15 years. During my time as an attorney in California, I have been a solo practitioner working in San Francisco. My practice focuses in wage and hour litigation and over the years I

1 have represented employees in all kind of disputes against their employers. I have represented
2 employees against large employers like Comcast, AC Square Inc., NTH Connect, Bath and Body
3 Works, O.C. Communications, Fox Transportation Inc. or Coffee Meets Bagel just to name a few.
4 These involve the complete range of California Labor Code wage and hour claims and some of
5 them included misclassification claims very similar to those at issue in this case. Most
6 importantly, most of these cases also involve PAGA claims.

7 4. Scott McKinney, Agustin Arrastio and Spyrock Gardens (“Defendants”) run a small
8 licensed cannabis farming business in the state of California known as Spyrock Gardens. Their
9 business relied on manual work of seasonal farm workers to plant, farm and trim the cannabis
10 from the fields. I became to learn through litigation that during the PAGA limitations period,
11 Defendants employes three individuals to perform these activities: David Aneas, Nicolas Gourdy
12 and Winston Gongora.

13 5. On behalf of the Plaintiffs I served on or about February 8, 2023 the Defendants and the
14 Labor Workforce Development Agency (“LWDA”) with a pre-requisite PAGA letter describing
15 the violations of the Labor Code allegedly committed by the Defendants as to the employment of
16 the plaintiffs.

17 6. On or about February 15, 2022, I caused to be filed in this court a lawsuit asserting nine
18 causes of action for 1) Violations of the Fair Labors Standards Act 2) violations of Labor Code
19 sec. 226 3) Failure to pay overtime under Labor Code §510 4) failure to provide meal and rest
20 breaks under Labor Code sec. 226.7 5) Failure to pay minimum wages pursuant to Labor Code
21 sec. 510 6) Late Payment of wages under Labor Code section 203 7) Liability of Owners and
22 managing agents for wages under Labor Code sec. 558.1 8) Unfair Business Practices and 9)
23 Penalties under the Private Attorney General Act.

24 7. Once litigation started, following the Rule 26 conference (as modified by local rule for
25 employment cases), the parties exchanged information pertaining to the claims of the parties and
26 a stipulation was entered to participate in early mediation. The parties were assigned by the Court
27 to Mediator Thomas Duckworth who conducted the mediation in this case on September 27,
28

1 2023. At said mediation and through arm's length negotiation, the parties were able to put their
2 dispute at rest reaching full settlement of the individual claims of the two named plaintiffs and the
3 PAGA claim for penalties on behalf of the LWDA.

4 8. The agreement reached by the parties has a confidentiality clause. The terms of the PAGA
5 settlement are as follows:

- 6 a. The settlement agreement provides for a total PAGA payment of \$5,000.00.
- 7 b. Winston Gongora, David Aneas and Nicolas Gourdy are the aggrieved employees
8 who worked during the period covered by the PAGA period.
- 9 c. The distributions of the proceeds shall be as provided by Labor Code sec. 2699 et
10 seq.: Seventy-Five Percent (75%) paid to the LWDA totaling \$3,750.00 and 25%
11 paid to the three aggrieved employees (Winston Gongora, David Aneas and
12 Nicolas Gourdy) amounting to \$1,250.00 to be distributed based on the number
13 their workweeks within the PAGA settlement period.
- 14 d. DEFENDANTS will provide to PLAINTIFF's counsel, with the total number of
15 workweeks for Winston Gongora, with his last-known mailing address in order for
16 plaintiff's counsel to mail his PAGA settlement check to him. The payment will
17 include a short statement that reads as follows: "Dear Mr. Winston Gonroga, you
18 receive this payment as part of the Private Attorney General Act Settlement reached in
19 the action of Aneas et al v. Mckinney et al., Case No. 3:23-cv-00674-SK."
- 20 e. The disbursement of the funds will take place 10 days after defendants deliver the
21 funds to Plaintiff's counsel on the effective date. The agreement defines the effective
22 date as December 27, 2023 or the date of the Court approval of PLAINTIFFS' motion
23 to approve the "PAGA" settlement. Whichever is later.
- 24 f. Settlement checks returned as undeliverable and those settlement checks remaining
25 un-cashed for more than 120 days after issuance will be sent to the cy pres beneficiary
26 Legal Aid at Work (180 Montgomery St. #600 San Francisco, CA).

1 g. The California Labor Workforce Development Agency ("LWDA") is being served
2 with a copy of this motion and the Settlement Agreement through the online
3 process as required by Labor Code § 2699(1) and therefore has notice of this
4 PAGA settlement through this motion.

5 9. I respectfully request that this court vacates the order dismissing the case without
6 prejudice. I hereby certify that this is necessary to effectuate the terms of the settlement between
7 the parties in this action. I also respectfully request that this court sets a hearing in late May 2024
8 to confirm that the disbursement of the PAGA settlement payments has been completed. After
9 that, the case can be dismissed with prejudice.

10 10. Plaintiffs do believe they have a strong liability case going forward but they have
11 to consider the risks and uncertainties of continued litigation (mainly whether plaintiffs will be
12 able to prove their case in its entirety and defeat all the defenses alleged). So, in order to reach
13 this settlement and present this PAGA settlement to the court for approval, I have evaluated the
14 possible best outcome of the PAGA claim in the light most favorable to plaintiffs. If all three
15 aggrieved employees were able to establish three PAGA violations per pay period within the
16 limitations period of the PAGA claim and if plaintiffs were able to defeat entirely each and every
17 defense alleged by the defendants, the possible recovery would be \$30,600.00. I reach this
18 amount by multiplying the PAGA penalty of \$100 x 3 (this represents three potential violations
19 per pay period) x 102 (this represents the number of pay periods estimated for the three aggrieved
20 employees in the limitations period). Thus, the settlement amount of \$5,000.00 represents 16% of
21 the highest potential recovery. This settlement compares very favorably to PAGA settlements in
22 several other cases approved by this court.

23 I declare under penalty of perjury under the laws of the United States that the foregoing is true
24 and correct.

25 Dated: November 12, 2023

26 /s/ Carlos Jato
27 CARLOS JATO
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