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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

ANDREW GONZALEZ, in a Representative capacity only, and on behalf of other members of the general public similarly situated

Plaintiff

v.

COIN DROP INVESTMENTS, LLC, a California Limited Liability Company; SPORTING FRATERNITY, INC., a California Corporation; and DOES 1-10, inclusive

Defendants

CASE NO. 37-2023-00016775-CU-OE-CTL

**PLAINTIFF'S *EX PARTE* APPLICATION
RE: UNOPPOSED PAGA SETTLEMENT
APPROVAL**

Date: February 15, 2024

Time: 8:45 a.m.

Dept.: C-68

Judge: Hon. Richard S. Whitney

1
2 **I. SUMMARY OF APPLICATION**

3 This is a “Wage and Hour” Labor Code §2698 *et seq.* (“PAGA”) action brought Against
4 Defendants COINDROP INVESTMENTS, LLC and SPORTING FRATERNITY, INC. (Collectively
5 “CDI” or “Defendants”). Plaintiff ANDREW GONZALEZ (“Plaintiff”) respectfully submits the
6 instant Points and Authorities in support of his *Ex Parte* Application for Approval of the PAGA
7 Settlement. This Request is **Unopposed**. The LWDA was timely notified of this proposal, and does
8 **not** object to the allocations.

9 **II. RELEVANT HISTORY AND TERMS OF SETTLEMENT**

10 The “Wage and Hour” Complaint filed by Plaintiff in this matter is alleged in a representative
11 (PAGA only) capacity. (See ROA # 1). As this is a “PAGA” action only, the Limitations Period begins
12 on February 8, 2022. There are approximately **54** PAGA Members at issue. (Yaeckel Decl., ¶3).
13 Following the exchange of informal discovery, analysis of numerous sets of time and wage data, and
14 a full day mediation before Hon. Herbert B. Hoffman (ret.) the Parties reached a proposed settlement
15 that includes a payment of penalties to the LWDA. (Yaeckel Decl., ¶4).

16 Based on the below figures, each PAGA Member would receive an average payment of
17 approximately **\$146.14**. This figure represents an average only, as the actual amounts paid will vary
18 depending on the amount of workweeks employed during the PAGA period.

19 On **December 29, 2023**, Plaintiff’s counsel first gave notice of the terms of the instant
20 Settlement to the LWDA. (Yaeckel Decl., ¶5).

21 On **January 31, 2024**, after the parties had finalized and executed the “long-form” settlement
22 agreement, Plaintiff’s Counsel again provided the LWDA with notice of the Settlement and specific
23 notice of the instant hearing. (*Id.*)

24 On **February 14, 2024**, Plaintiff’s counsel uploaded via the LWDA’s electronic filing portal
25 copies of this entire *ex parte* application, including the Notice, this supporting Memorandum,
26 Declaration, and Proposed Order & Judgment. (Yaeckel Decl., ¶7). To date, Plaintiff’s counsel has not
27 received any response from the LWDA. *Id.*
28

1 The Total Value of the proposed Settlement is **\$85,000.00** which is broken down as follows:

- 2 * **\$28,333.33** Attorneys' Fees (1/3 of total settlement value);
- 3 * **\$7,5000.00** Costs of Litigation.
- 4 * **\$5,000.00** Plaintiff Enhancement Award.
- 5 * **\$2,600.00** Cost of Settlement Administration.
- 6 * **\$10,000.00** Plaintiff's Individual Section 1542 Release.
- 7 * Sub-Total of **\$31,566.67**. 75% (**\$23,675.00**) shall be assigned/paid to the state
- 8 of California as penalties.
- 9 * The remaining 25% (**\$1,000.00**) in cash will be disbursed among all employees
- 10 based on work weeks employed during the PAGA period. (Yaeckel Decl., ¶8)

11 Given the above, the average payment to each individual employee will be approximately
12 **\$146.14**. (*Id.*)

13 Further, there are no restrictions for any of the **54** employees to file individual actions, as the
14 settlement agreement only covers PAGA claims. (Yaeckel Decl., ¶9); **Exhibit A**: "Released Claims"
15 § 1.01(i), p. 3).

16 **Please Note**: Although this was alleged as a PAGA only claim, the Parties subsequently
17 negotiated an individual settlement in which Plaintiff will receive a total of \$10,000, less applicable
18 withholdings and deductions, in exchange for a full and general release of his individual claims only,
19 including unknown claims, separate and apart from the settlement of his claims alleged in this action.
20 As set forth above, the LWDA has notice of this Settlement and does **not** object.

21 **III. CONTROLLING AUTHORITY**

22 PAGA "authorizes an employee to bring an action for civil penalties on behalf of the state
23 against his or her employer for Labor Code violations committed against the employee and fellow
24 employees." *Iskanian v. CLS Trans. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 360. "To compensate
25 for the lack of [a]dequate financing of essential labor law enforcement functions,' the California
26 legislature enacted PAGA to permit aggrieved employees to act as private attorneys general to collect
27 civil penalties for violations of the Labor Code." *Sakkab v. Luxottica Retail N. Am., Inc.* (9th Cir.
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2015) 803 F.3d 425, 430.

Recently the Court of Appeal has given guidance to trial courts in reviewing a PAGA settlement:

We therefore hold that **a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.** (*See Williams*, *supra*, 3 Cal.5th at p. 546, 220 Cal.Rptr.3d 472, 398 P.3d 69 [PAGA "sought to remediate present violations and deter future ones"]; *Arias*, *supra*, 46 Cal.4th at p. 980, 95 Cal.Rptr.3d 588, 209 P.3d 923 [the declared purpose of PAGA was to augment state enforcement efforts to achieve maximum compliance with labor laws].) *Moniz v. Adecco USA, Inc.*, (2021) 72 Cal. App. 4th 56, 77.

Prior to *Moniz*, other Courts have followed the rationale in *O'Connor v. Uber Techs., Inc.*, 201 F.Supp.3d 1110, 132-35 (N.D. Cal. 2016), which states a court is permitted to approve a PAGA settlement if the settlement is "fair and adequate in view of the purposes and policies of the statute." *Id.*

A court may award a lesser amount than the maximum civil penalty amount if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory. Lab. Code, § 2699(e)(2); *Amaral vs. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213-1214. *See e.g., Fleming v. Covidien Inc.*, 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by 82%).

The Court in *Flores v. Starwood Hotels & Resorts Worldwide, Inc.* ("Flores") the court was asked to approve a PAGA settlement (the "Settlement"). *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1075–76 (C.D. Cal. 2017). In deciding whether the court should approve the Settlement, the court looked at the California legislature, the California Courts of Appeal, the California Supreme Court, and the California Labor & Workforce Development Agency for a definitive answer as to what precedent the court should follow in either approving or denying the settlement. *Id.* The court was not able to find a definitive answer. *Id.* As such, the court followed the rationale in *O'Connor v. Uber Techs., Inc.*, 201 F.Supp.3d 1110, 132-35 (N.D. Cal. 2016), which states a court is permitted to approve a PAGA settlement if the settlement is "fair and adequate in view of the purposes and policies of the statute." *Id.*

1 In deciding whether the settlement was “fair and adequate,” the *Court’s have* looked sought
2 how the parties divvied up the civil penalties under Section 2699(i) of the California Labor Code.
3 *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1076–77 (C.D. Cal.
4 2017). As the court felt the parties’ division of penalties was fair and adequate pursuant to the statute,
5 the court approved the settlement. *Id.*

6 **IV. DISCUSSION**

7 The parties reached the terms of their proposed settlement agreement following the exchange
8 of extensive information and employment records. The parties submit the proposed settlement of
9 PAGA penalties is fair, adequate, and reasonable.

10 **A. THE BASIS FOR THE *EX PARTE* REQUEST**

11 The instant *Ex Parte* request is based on the fact that **(1)** the PAGA period “cutoff date” is
12 contingent on Court approval, any delay diminishes the amounts received by the impacted employees;
13 **(2)** Notice to certain ex-employees may be adversely impacted by further delay (*i.e.* ex-employees may
14 change their mailing address without filing a proper “forwarding address”). (Yaeckel Decl., ¶10).

15 Additionally, an expedient approval of this settlement will provide a direct benefit to the
16 impacted employees at issue. The “fixes” provide a guarantee of future Labor Code compliance, and
17 an immediate monetary benefit. It also allows Defendants the opportunity to move on, and focus on
18 future business. (Yaeckel Decl., ¶11).

19 **B. THE NATURE AND SCOPE OF THE ALLEGED VIOLATIONS**

20 The Complaint alleges Labor Code violations which triggered penalties under the PAGA
21 statute (Labor Code §2698 et seq.) (See ROA #1.) Plaintiff also alleged all employees were denied
22 compliant Meal and Rest Periods, minimum wages, overtime, accurate wage statements,
23 reimbursements, and suffered waiting time violations. (See ROA #1, Exhibit 1: “Plaintiff’s LWDA
24 Notice” attached thereto).

25 Specifically, Plaintiff alleges that he - and other employees - received “short,” “late,” or
26 “missing” Meal Periods, including those documented within Defendant’s Time Records. (Yaeckel
27 Decl., ¶12). Plaintiff also challenged whether Defendant maintained lawful meal and rest periods.
28

1 Plaintiff alleged he- and other employees -were not properly compensated due to Defendant’s failure
2 to maintain accurate time records. (*Id.*) Finally, Plaintiff also challenged whether Defendant
3 maintained lawful meal and rest period policies. (*Id.*)

4 **C. ANALYSIS OF POTENTIAL LIABILITY, ON A REPRESENTATIVE BASIS**

5 The catalyst of this litigation concerned allegations that Mr. Gonzalez was denied legally
6 compliant meal and rest periods, and was not paid for all hours worked. (Yaeckel Decl., ¶13.).
7 Plaintiff’s counsel believes their investigations revealed that Defendant’s timekeeping policies and
8 employee records were not in compliance with California law. (Yaeckel Decl., ¶14). However, these
9 investigations also revealed that the “rate of violation” by Defendant was significantly less than 100%.
10 (*Id.*) On many of those occasions, it appears that Defendant did, in fact, comply with the law. (*Id.*)

11 Based on the above, Plaintiff’s counsel believes, the maximum liability in a case of this type
12 would be in the range of **\$100,000.00** to **\$200,000.00**. (Yaeckel Decl., ¶15). However, given the rate
13 of violations and potential defenses articulated by Defendants, it was highly unlikely Plaintiff could
14 ever recover anything approaching a maximum judgment. (*Id.*)

15 Moreover, Plaintiff’s counsel is aware of the Court’s discretion to mitigate penalties pursuant
16 to California Labor Code section 2699(e)(2). (Yaeckel Decl., ¶16). To confirm, Plaintiff’s counsel
17 experienced the mitigation of “PAGA” penalties in *Carrington v. Starbucks Corp.* (2018) 30
18 Cal.App.5th 504. (*Id.*) In *Carrington*, Judge Bacal significantly mitigated PAGA penalties (\$5 per
19 violation), due to the efforts made by the employer to comply with the law. (*Id.*)

20 Plaintiff’s counsel agrees with Her Honor, and with the provision of the Labor Code, that
21 penalties *should* be mitigated where violations are minimal (or rare), or where the employer makes
22 significant efforts to comply with the Labor Code. (Yaeckel Decl., ¶17.)

23 As the above factors exist in this case, it is the opinion of Plaintiff’s counsel that the settlement
24 is fair, adequate, and reasonable. Specifically, Plaintiff’s counsel’s understanding is that Defendant
25 has agreed to review and make changes to its policies, and amend them to the extent they do not
26 comply with California law. (Yaeckel Decl., ¶18.)

27 Plaintiff’s counsel, William B. Sullivan has approximately 30 years of experience in “class
28

1 action” litigation, both as plaintiff and defense counsel. (Yaeckel Decl., ¶19.) Plaintiff’s counsel, Eric
2 K. Yaeckel, has over 13 years of experience prosecuting class and representative action claims under
3 the California Labor Code. (*Id.*) Plaintiff’s counsel, Eric K. Yaeckel and William B. Sullivan, are the
4 attorneys of record in a matter that was recently heard (and favorably decided) before the California
5 Supreme Court titled *Donohue v. AMN Servs., LLC* (2021) 11 Cal.5th 58. (*Id.*) The *Donohue* matter
6 was a certified class and PAGA action. (*Id.*)

7 Plaintiff’s counsel were lead counsel on approximately 40 employment “wage and hour” claims
8 with class action, or representative action allegations. (*Id.*) Based on said experience, it is the opinion
9 of Plaintiff’s counsel that this settlement represents a fair and adequate payment. (Yaeckel Decl., ¶20.)

10 **D. THE ALLOCATION OF PENALTIES, AND LIMITED RELEASE OF CLAIMS**

11 While Labor Code section 2699(l) requires a court to “review and approve any penalties sought
12 as part of a proposed settlement agreement,” it does not provide any guidance as to what is considered
13 an ‘adequate’ allocation of these penalties. However, Trial Courts have held that *where the* division
14 of penalties was fair and adequate and in accordance with the PAGA statute, the court should approved
15 the settlement. *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1076–77
16 (C.D. Cal. 2017).

17 After subtracting the contingent costs set forth above, the parties seek to allocate **\$31,566.67**.
18 of the total settlement to the Total Value of the PAGA Fund. 75% (**\$23,675.00**) shall be assigned/paid
19 to the LWDA as penalties. The remaining 25% (**\$7,891.67**) will be allocated and distributed among
20 the current or ex-employees within the PAGA Period. (Yaeckel Decl., ¶21)

21 The parties contend the settlement agreement amount is fair, adequate, and reasonable.
22 (Yaeckel Decl., ¶¶ 18, 20, 22). Moreover, the PAGA settlement does not bar any employee from
23 pursuing their own individual Labor Code claims. (Yaeckel Decl. ¶9; **Exhibit A**: “Released Claims”
24 § 1.01(i), p. 3).). The release only applies to the PAGA claims for penalties, based upon the
25 allegations in Plaintiff’s operative Complaint. (*Id.*)

26 **E. THE LWDA WAS NOTIFIED MULTIPLE TIMES, AND DOES NOT OBJECT**

27 On **December 29, 2023**, Plaintiff’s counsel gave notice of the instant Settlement to the LWDA.
28

1 (Yaeckel Decl., ¶5).

2 On **January 31, 2023**, after the parties had finalized and executed the "long-form" settlement
3 agreement, Plaintiff's Counsel again provided the LWDA with notice of the Settlement and specific
4 notice of the instant hearing. (*Id.*)

5 On **February 14, 2024**, Plaintiff's counsel uploaded via the LWDA's electronic filing portal
6 copies of this entire *ex parte* application, including the Notice, this supporting Memorandum,
7 Declaration, and Proposed Order & Judgment. (Yaeckel Decl., ¶7). To date, Plaintiff's counsel has not
8 received any response from the LWDA. *Id.*

9 To date, Plaintiff has not received a response from the LWDA regarding the proposed
10 settlement. If the LWDA contacts Plaintiff's counsel at any time prior to the hearing, Plaintiff's
11 counsel will provide an updated declaration to the Court. (Yaeckel Decl., ¶23).

12 **V. CONCLUSION**

13 The parties respectfully request that the Court approve their proposed allocation of PAGA
14 penalties to the LWDA and the represented employees.

15 *In the alternative*, should the Court wish to have a noticed motion, Plaintiff asks for an order
16 shortening time to have the motion heard based on these unopposed moving papers.

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18 Dated: February 14, 2024

SULLIVAN & YAECKEL LAW GROUP, APC

19
20 *Eric Yaeckel*

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22 Eric K. Yaeckel
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