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7 Attorneys for Plaintiffs

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO-CENTRAL DIVISION

10 SALVADOR VELEZ, in his capacity as)
11 the State of California's designated)
12 proxy under the Private Attorneys)
13 General Act and on behalf of others,)

14 Plaintiffs,

15 vs.

16 ESSEX PROPERTY TRUST, INC., *et*)
17 *al.*)

18 Defendants.)

Case No.: 37-2023-00020787-CU-OE-CTL

**NOTICE OF PLAINTIFFS'
UNOPPOSED EX PARTE
APPLICATION TO APPROVE
PAGA SETTLEMENT; MEM. OF
P&A'S ISO THEREOF**

Hearing Date: July 9, 2024

Hearing Time: 8:30 a.m.

Judge: Hon. Gregory W. Pollack

Dept.: 71

Complaint Filed: May 16, 2023

Trial Date: None

**[Rutledge Declaration and [Proposed]
Order filed concurrently herewith]**

1 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on **July 9, 2024 at 8:30 a.m.** in Department 71
3 of the above-entitled court, located at 330 West Broadway, San Diego, California
4 92101, before the Hon. Gregory W. Pollack, Plaintiff Salvador Velez, on behalf of
5 himself, similarly aggrieved employees (collectively the “Plaintiffs”), and the State of
6 California via counsel as a quasi-assistant attorney general, will move and hereby do
7 move the Court *ex parte* for an order approving the parties’ Private Attorney General
8 Act Settlement and Release (PAGA Settlement Agreement), a copy of which is
9 attached as **Exhibit 1** to the Declaration of Thomas D. Rutledge filed concurrently
10 herewith and incorporated herein by reference. Alternatively, Plaintiffs request an
11 advanced hearing date on a noticed motion to approve the PAGA Settlement
12 Agreement.

13 This Application is pursuant to CRC Rules 3.1200, *et seq.* and Labor Code
14 § 2699(l), which provides, “[t]he superior court shall review and approve any [PAGA
15 penalties] sought as part of a proposed settlement agreement.” Good cause exists to
16 grant this Application because the settlement is fair and reasonable and exigent
17 circumstances support the requested relief. (Rutledge Decl., ¶¶ 45-47.)

18 Plaintiffs’ Counsel provided Defendant with written notice of this Application.
19 This Application is unopposed. (Rutledge Decl., ¶¶ 48-50.)

20 This Application is based upon this Notice, the pleadings in support thereof,
21 including but not limited to the Declaration of Thomas D. Rutledge, and the records
22 in the Court’s file in this action, and upon such further evidence and argument the
23 Court may request.

24 Dated: June 25, 2024

Law Office of
Thomas D. Rutledge

26 By: Thomas D. Rutledge
27 /s/Thomas D. Rutledge
28 Attorney for the Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Plaintiffs very respectfully request this Honorable Court to approve the PAGA Settlement as set forth in the proposed order filed concurrently with this Application pursuant to Labor Code § 2699(l). For the reasons explained below, the PAGA Settlement is fair and reasonable.

II. STANDARD OF REVIEW.

Labor Code § 2699(l), provides, “[t]he superior court shall review and approve any settlement of any 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.” PAGA settlements can be approved via noticed motion or ex parte. (*Hernandez v. SFM, LLC*, Superior Court of San Diego County No. 37-2016-00015169-CU-OE-CTL, Gregory W. Pollack, Judge [approving PAGA settlement via ex parte.])

Court review of PAGA settlements is significantly different from the review of class action settlements, the latter of which typically focus on the amount received by the class, compares the settlement amount to the reasonable range of potential outcomes in the case, and employs a procedural two-step process (preliminary and final approval). (*See Salazar v. Sysco Central Cal.* (E.D. Cal. Feb. 2, 2017) No. 15-01758-DAD, 2017 WL 1135801, *2.)

III. SUMMARY OF THE SETTLEMENT.

Without admitting wrongdoing and pursuant to the PAGA Settlement Agreement, Defendant agrees to pay the Gross Settlement Amount of \$720,000 in exchange for the full and final settlement and release of Plaintiffs’ Labor Code claims via the PAGA for all nonexempt employees who worked during the timeframe from April 3, 2022 to June 18, 2024. From the gross amount, less Plaintiffs’ Counsel’s fees and costs, Plaintiff Velez’s incentive award, and the Settlement Administrator’s costs, about 1540 current and former Aggrieved Employees will receive about \$73 apiece, and the State will receive \$340,392. There is no reversion of settlement proceeds, and

1 uncashed checks after 180 days are payable to the California State Controller's Office
2 - Unclaimed Property Fund, to be held in the name of the Aggrieved Employee.
3 (Rutledge Decl., **Ex. 1**, ¶¶ 1.17, 4.1, and 4.5.)

4 **IV. PARTIES TO THE SETTLEMENT AGREEMENT.**

5 **A. The Named Plaintiff.**

6 From about September 29, 2021 to December 29, 2022, Defendant employed the
7 named Plaintiff as a property manager, a nonexempt nonunion employee in the County
8 of Los Angeles. On December 29, 2022, Defendant involuntarily terminated Plaintiff's
9 employment. (ROA #60; 2AComp., ¶ 16.)

10 **B. The Defendant.**

11 Defendant Essex Property Trust, Inc.¹ is generally in the apartment rental
12 business. Defendant manages thousands of luxury apartments in the U.S. and
13 California, normally in high income areas. Organized as a real estate investment trust,
14 Defendant is a publicly traded company (ticker symbol ESS) and headquartered in San
15 Mateo, California. (ROA #60; 2AComp., ¶ 15; www.essexapartmenthomes.com.)

16 **C. The Aggrieved Employees.**

17 The Aggrieved Employees means "all current and former hourly paid or
18 nonexempt employees who worked for Defendant within the State of California at any
19 time during the PAGA Period." This group has about 1540 people. Collectively, the
20 named Plaintiff, the State of California, and Aggrieved Employees are referred to as
21 "Plaintiffs." (Rutledge Decl., **Ex. 1**, ¶ 1.1.)

22 **V. FACTS AND PROCEDURAL HISTORY.**

23 In January 2023, Plaintiff hired counsel shortly after Defendant terminated his
24 employment. Plaintiffs' Counsel sent several letters to Defendant requesting to obtain
25

26 ¹ Originally, Plaintiff Velez named EPT, SPE LLC; Essex Portfolio, L.P.; Essex Portfolio
27 Management, L.P.; and Essex Management Corporation, Inc; through the meet and confer process,
28 Defendants represented under penalty of perjury that none of these entities employed anyone in
California during the PAGA Period and based thereon, Plaintiff dismissed these entities in good
faith.

1 access to Plaintiff's payroll records and employee personnel files. Upon review of
2 Plaintiff's payroll records and employee personnel file, Plaintiff and his counsel
3 believed that the Plaintiff and his fellow coworkers (Aggrieved Employees) may be
4 subject to Labor Code violations.

5 On April 3, 2023, Plaintiff Velez, via counsel, filed a notice with the LWDA.
6 (ROA #60, Ex. 1.) On May 16, 2023, Plaintiff commenced this PAGA action, which
7 seeks the recovery of PAGA penalties for the following claims: (1) Failure to Provide
8 Access to Employee Personnel Records (Cal. Labor Code §§ 226, 432, and 1198.5);
9 (2) Failure to Pay State Minimum/Regular Wages; (3) Failure to Pay State Overtime
10 Wages; (4) Failure to Timely Pay Wages; (5) Meal and Rest Break Labor Code
11 Violations; (6) Inaccurate Wage Statements; (7) Failure to Maintain Payroll Records;
12 (8) Failure to Reimburse Business Expenses in Violation of California Labor Code
13 § 2802; and (9) Miscellaneous claims via the PAGA. (ROA #1.)

14 On July 20, 2023, Plaintiff filed a First Amended Complaint for procedural
15 exhaustion purposes only, no claims or new facts were added. (ROA #10.) On July 28,
16 2023, Defendant filed a Motion to Stay and Compel Arbitration. (ROA #11.) On
17 September 5, 2023, the parties appeared before the Court for a Status Conference and
18 thereafter the parties agreed to attend mediation. (ROA #28.) The parties also agreed to
19 stay the PAGA action pending the outcome of this mediation. (ROA #s 43-45.)

20 For more than 14 months, the parties spent considerable time trying to bring
21 this case to a conclusion. Shortly after the commencement of this litigation, Plaintiffs
22 served Defendant with written discovery and have since diligently prosecuted the
23 PAGA claims on behalf of the State of California and other Aggrieved Employees.
24 (Rutledge Decl., ¶ 38.)

25 In preparation of mediation, the parties began a series of detailed discussions
26 via counsel during which time counsel engaged in open and frank discussions
27 regarding the merits of this case. (Rutledge Decl., ¶¶ 39.) As part of the informal
28 discovery process, Defendant voluntarily produced approximately 5,000 pages of

1 documents and employment data, including pertinent policies and procedures,
2 personnel records, a random sample of time records, and a random sample of pay
3 records. (Rutledge Decl., ¶ 40).

4 Through the foregoing process, the Parties conducted a significant investigation
5 of the facts and law. Such discovery and investigation includes: (1) the Plaintiffs'
6 analysis of randomly selected Aggrieved Employee payroll data Defendant provided,
7 including size and composition of the Aggrieved Employees, applicable employment
8 policies of the Defendant, and payroll and time records for a significant number of
9 current and/or former employees statewide, involving a large number of pages of
10 policies and documents, electronic wage statements, and other records, (2) analysis of
11 legal positions taken by the Defendant, (3) interviews of material witnesses,
12 (4) calculation and analysis of potential damages and penalties based on the data
13 produced by Defendant, and (5) research and analysis of applicable law with respect to
14 the claims alleged and potential defenses thereto. Plaintiffs' Counsel devoted a
15 substantial amount of his practice to evaluating the data, interviewing witnesses, and
16 preparing for the mediation and, if unsuccessful, getting ready for trial. (Rutledge
17 Decl., ¶¶ 40-42.)

18 On April 5, 2024, Plaintiff Velez filed an amended PAGA filing with the
19 LWDA, which asserted new claims and theories. (ROA #60, Ex. 2.) This filing was in
20 preparation of mediation or trial if mediation was unsuccessful.

21 On April 10, 2024, the parties via zoom attended a full day mediation before
22 Steve Serratore, Esq., a reputable private mediator. With the efforts of all parties and
23 their counsel, and especially with the invaluable assistance from the highly capable
24 mediator, the parties signed an MOU, and later signed a more detailed and lengthy
25 Settlement Agreement that took months for the parties to finalize. (Rutledge Decl., ¶¶
26 43-44.)

27 On April 30, 2024, the case was reassigned from department 69 to this
28 department. (ROA #52.) On June 13, 2024, after the 65-day waiting period expired,

1 Plaintiffs filed a Second Amended Complaint, pursuant to stipulation and Court Order.
2 (ROA #s 57, 59, 60.) This is the operative Complaint.

3 On June 18, 2024, Plaintiffs' Counsel provided Defendant with written notice of
4 Plaintiffs' intent to file this Application. This Application is unopposed. Plaintiffs have
5 complied with all required administrative filings with the LWDA to process this
6 settlement. (Rutledge Decl., ¶¶ 48-50, Ex. 2.)

7 **VI. REASONS FOR SETTLEMENT.**

8 The declaration submitted by counsel explains the reasons in support of this
9 settlement in detail. The monetary relief obtained from this Settlement Agreement is
10 superb compared to the possible outcome if this case went to trial. (Rutledge Decl., ¶¶
11 51-75.)

12 In summary, Plaintiffs allege that Defendant committed a wide range of Labor
13 Code violations, many of which are highly technical, affected some not all Aggrieved
14 Employees, and occurred over a relatively short period of time. Many of the claims
15 alleged include often difficult to prove "off-the-clock" claims and many of Plaintiffs'
16 meal break claims depend on Plaintiffs obtaining less than ideal anecdotal evidence.
17 (Rutledge Decl., ¶ 73.) Further, it appears the cause of some violations are a byproduct
18 of COVID lockdowns and working conditions caused by the unprecedented global
19 pandemic. Based on counsel's review of records, there is no evidence to suggest these
20 alleged violations and work conditions are ongoing or likely to occur in the future.
21 (Rutledge Decl., ¶ 74.)

22 A gross payout of \$720,000 to 1540 Aggrieved Employees results in a
23 meaningful payout of about \$73 per person and more than \$340,000 to the State. In
24 Plaintiffs' Counsel's humble opinion, this settlement is "fair, adequate, and
25 reasonable" and furthers the PAGA's remedial purpose. (Rutledge Decl., ¶ 7; *see also*
26 *Moniz, supra*, 72 Cal.App.5th 56.)

VII. PLAN OF ALLOCATION.

A. The Gross Settlement Amount.

From the Gross Settlement Amount, the Defendant via the Settlement Administrator shall make the following distributions:

Gross Settlement Amount:	\$720,000
Plaintiffs' Counsel Fees & Costs (minus):	(\$258,289)
Est. Settlement Admin. Costs (minus):	(\$6,255)
Payment to the LWDA (minus):	(\$340,392)
Plaintiff Velez's Incentive Award (minus)	(\$2,000)
Est. Net Amount to Aggrieved Employees:	\$113,364

(Rutledge Decl., Ex. 1, ¶¶ 1.17, 4.1.)

B. Administration of the Gross Settlement Amount.

Within 30 days from the Effective Date, Defendant will furnish the settlement funds to the Settlement Administrator (i.e., Phoenix Settlement Administrators Inc.) per the terms of the PAGA Settlement Agreement. If any Settlement checks are returned, the Settlement Administrator will use reasonable efforts to locate the Aggrieved Employee and re-mail the Settlement Payment to the applicable Aggrieved Employee. (Rutledge Decl., Ex. 1, ¶ 1.25.)

No funds will revert to Defendant from the Gross Settlement Amount. Remaining funds from any uncashed settlement checks after 180-day expiration period shall be payable to the California State Controller's Office - Unclaimed Property Fund, to be held in the name of the Aggrieved Employee. (Rutledge Decl., Ex. 1, ¶ 4.5.)

C. Settlement Payments to Aggrieved Employees.

With the aim to fairly distribute the Settlement Payments to Aggrieved Employees, Plaintiffs' Counsel and Defense Counsel arrived at a formula designed to fairly determine each Aggrieved Employee's *pro rata* payment from the Distributable Amount, as allowed by PAGA, based on based on their length of service. The lump sum Net Settlement Payment to each member of the PAGA Group will be determined by dividing twenty-five percent (25%) of the Net Settlement Amount by the total

1 number of pay periods worked by all members of the PAGA Group during the
2 Settlement Period (the “Pay Period Amount”) and then multiplying the Pay Period
3 Amount by the number of pay periods worked by the individual PAGA member. The
4 Net Settlement Payments to the PAGA members shall come out of the Qualified
5 Settlement Fund. (Rutledge Decl., **Ex. 1**, ¶¶ 1.18, 1.20, and 6.)

6 All payments to the Aggrieved Employees shall be characterized as civil
7 penalties payable pursuant to the PAGA. The Settlement Administrator will report
8 these payments to the appropriate taxing authorities and issue recipients an IRS 1099
9 Form. (Rutledge Decl., **Ex. 1**, ¶ 9.2.4.)

10 **D. Plaintiffs’ Counsel’s Requested Fees/Costs are Reasonable.**

11 An award of reasonable attorney’s fees and costs to a prevailing plaintiff in a
12 PAGA action is authorized by statute. (Labor Code § 2699(g)(1); *see also* Code of
13 Civil Procedure § 1021.5.) Plaintiffs’ request here is unopposed and expressly
14 permitted per the Settlement.

15 Here, Plaintiffs’ Counsel seeks, and Defendant does not oppose, an award of
16 fees and costs of \$258,289. The fees requested by Plaintiffs’ Counsel is one third of the
17 settlement and is less than Plaintiffs’ Counsel’s actual lodestar. (*Ketchum v. Moses*
18 (2001) 24 Cal.4th 1122, 49 [lodestar approach to fees is a reasonable method in
19 assessing the reasonableness of fees]; *see also Laffitte v. Robert Half International Inc.*
20 (2016) 1 Cal.5th 480.)

21 The requested fees and costs are fair compensation for undertaking complex,
22 risky, expensive, and time-consuming litigation solely on a contingency basis. This is
23 especially true because case law (*Ketchum/Laffitte*, *supra*) supports the recovery of the
24 requested fee amount, is below Plaintiffs’ Counsel’s actual lodestar, is reasonable
25 considering the PAGA action Plaintiffs’ Counsel single-handedly prosecuted and the
26 vigorous defense the Defendant exhibited throughout most of this litigation. (Rutledge
27 Decl., ¶¶ 51-93.)

28 The work performed by Plaintiffs’ Counsel is well documented in his

1 declaration filed concurrently herewith. (Rutledge Decl., **Ex. 3** [Timesheet].) This time
2 is summarized as follows:

Name of Attorney	YEAR OF BAR ADMISSION	RATE	HOURS	LODESTAR
Thomas D. Rutledge, Partner	1995	\$1,057	255.5	\$270,064

3
4
5 (Rutledge Decl., ¶¶ 94-97.)

6
7 Plaintiffs' Counsel's fees are consistent with noted sources, such as the 2023-
8 2024 Laffey Matrix. (See Rutledge Decl., **Ex. 4**.) Courts have previously approved Mr.
9 Rutledge's hourly rate. (*Id.*, ¶¶ 76-93.)

10 The Settlement Agreement also permits Plaintiffs' Counsel to recover actual
11 costs. Plaintiffs' Counsel incurred no less than \$18,313 in actual costs. (Rutledge
12 Decl., **Ex. 5** ¶¶ 100-102.)

13 **E. The Named Plaintiff's Incentive Award is Reasonable.**

14 As mentioned in the Settlement Agreement, the named Plaintiff shall receive
15 \$2,000 as an incentive award for his service and courage in bringing this case in his
16 name. This is reasonable consideration for bravely his stepping forward as a PAGA
17 representative. (Rutledge Decl., Ex. 1 ¶ 2, ¶¶ 110-121.)

18 **VIII. CONCLUSION.**

19 For the foregoing reasons, the parties very respectfully request this Court to
20 approve the PAGA Settlement and sign the [Proposed] Order filed herewith.

21 Dated: June 25, 2024

Law Office of
Thomas D. Rutledge

22
23 By: Thomas D. Rutledge
24 /s/Thomas D. Rutledge
25 Attorney for the Plaintiffs
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

I, THOMAS D. RUTLEDGE, the undersigned, am employed in the County of San Diego, State of California; I am over the age of 18 and not a party to the within action; my business address is 16956 Via de Santa Fe, Suite 1847, Rancho Santa Fe, California 92091-4606.

On June 25, 2024, I served the foregoing document(s) described as:

NOTICE OF PLAINTIFFS' UNOPPOSED EX PARTE APPLICATION TO APPROVE PAGA SETTLEMENT; MEM. OF P&A'S ISO THEREOF

on the interested parties to this action by placing a copy thereof enclosed in a sealed envelope addressed as follows: **See Attached List.**

☒ **(BY MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence was deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in San Diego, California.

☒ **(BY E-MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for emailing. This correspondence was sent via email to the recipients' business email addresses identified above.

☐ **(BY OVERNIGHT DELIVERY SERVICE)** I served the foregoing document by Federal Express, an express service carrier which provides overnight delivery, as follows. I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.

☐ **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

Executed June 25, 2024, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

THOMAS D. RUTLEDGE
/s/THOMAS D. RUTLEDGE

SERVICE LIST

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