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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ELBA RUSSO, Plaintiff, vs. WEST HOLLYWOOD HEALTHCARE AND WELLNESS CENTRE LP; COUNTRY VILLA WILSHIRE HEALTHCARE CENTER; AND SHLOMO RECHNITZ; and DOES 1 to 25, inclusive, Defendants.	CASE NO: 23STCV27188 Assigned for all Purposes to the Honorable Daniel M. Crowley [Dept. 71] **DECLARATION OF SEVAG NIGOGHOSIAN IN SUPPORT OF MOTION FOR APPROVAL OF PAGA SETTLEMENT AND RELEASE** Action filed: November 6, 2023 Hearing Date: August 29, 2025 Hearing Time: 8:30am Hearing Dept: 71 Resv. ID: 408751464892

DECLARATION OF SEVAG NIGOGHOSIAN

I, SEVAG NIGOGHOSIAN, declare and state as follows:

1. I am an attorney duly licensed to practice before all the Courts of the State of California. I am the attorney of record for Plaintiff, ELBA RUSSO (“Plaintiff”), in her lawsuit against Defendants, WEST HOLLYWOOD HEALTHCARE AND WELLNESS CENTRE LP (“WHHWC” or “Defendant(s)”).

2. I am experienced in handling employment law matters and specifically wage and hour cases, including PAGA claims. I have been practicing law since 2003. In my representation

of employees, I have handled several individual and representative cases on behalf of employees with claims of minimum wages, overtime violations, as well as other wage claims, including meal breaks and rest breaks.

3. Except as otherwise indicated, I have personal knowledge of all matters set forth herein and, if called as a witness, could and would competently testify thereto under oath.

Factual and Procedural Background

4. Plaintiff started working at WHHWC as a Dietary Aid on or around March 25, 2020. Plaintiff's employment with WHHWC ended on or around March 2023. Plaintiff was an hourly, non-exempt employee.

5. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* ("PAGA"). On May 31, 2023, Plaintiff, on behalf of herself and Defendants' other California non-exempt hourly employees (hereafter collectively the "Aggrieved Employees") gave written notice by electronic service to the California Labor and Workforce Development Agency ("LWDA") and via certified mail to Defendants of her claims against Defendants. In her notice to the LWDA, Plaintiff asserted on behalf of herself and the Aggrieved Employees that Defendants (1) failed to compensate for all hours worked; (2) failed to pay minimum wages (Labor Code Sections 1194, 1197, 1197.1); (3) failed to pay overtime compensation (Labor Code Section 510); (4) failed to provide accurate itemized wage statements (Labor Code Section 226); (5) failed to pay wages at the end of employment (Labor Code section 203); (6) failed to timely pay wages due during employment (Labor Code Section 204); (7) failed to provide rest breaks (Labor Code Section 226.7); (8) failed to provide meal breaks (Labor Code Sections 512, 226.7); (9) failed to reimburse business expenses (Labor Code Sections 2800, 2802); (10) failed to provide sick pay (Labor Code sections 232, 246); and (11)

failed to provide Worker's Compensation coverage (Labor Code section 2802).

6. Plaintiff filed her lawsuit on November 6, 2023, in the Superior Court for the State of California, County of Los Angeles, Case No. 23STCV27188 with causes of action under the following legal theories: (1) Failure to Compensate for all Hours Worked; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Overtime; (4) Failure to Provide Accurate Wage Statements; (5) Failure to Pay Wages when Employment Ends; (6) Failure to Pay Wages Owed Every Pay Period; (7) Failure to Provide Rest Breaks; (8) Failure to Provide Meal Breaks; (9) Failure to Reimburse Business Expenses; (10) Violation of California Business & Professions Code §17200; (11) Private Attorneys General Act ("PAGA"); (12) Discrimination on the Basis of Disability in Violation of Fair Employment and Housing Act ("Feha); (13) Failure to Accommodate Disability in Violation of Feha; (14) Failure to Engage in Interactive Process to Determine Reasonable Accommodation in Violation of Feha; (15) Retaliation in Violation of Feha; (16) Failure to Prevent Discrimination and Retaliation in Violation of Feha; and (17) Wrongful Termination in Violation of Public Policy.

7. According to Defendants' records, it has employed 312 Aggrieved Employees from May 31, 2022 through August 15, 2024, and that there are paychecks issued for a total of approximately 5534 pay periods worked for that same time period.

8. Defendants deny any liability or wrongdoing of any kind whatsoever associated with the lawsuit and the Representative PAGA Claim. It is the desire of the Parties to fully, finally, and forever compromise, and discharge all claims known or unknown related to those alleged in Plaintiff's lawsuit.

9. On October 8, 2023, the Parties attended a full day mediation session with experienced wage-and-hour mediator Steve Pearl. At the mediation, the Parties agreed to settle the entire action, including the Representative PAGA claim for violation of Labor Code §2698,

et seq. Before agreeing to the terms of the Settlement, the Parties engaged in informal discovery regarding Defendants' policies, practices, operations, time and payroll information and other topics. In advance of mediation, Defendants produced Plaintiff's personnel file, including time and payroll data for Plaintiff and also produced the time records and payroll records for 63 aggrieved employees. Through extensive arm's length negotiations at the mediation and only after discovery and investigation were performed, the Parties agreed to settlement terms.

10. The Parties conducted investigation of the facts and law both before and after the lawsuit was filed. Counsel for the Parties have further investigated the applicable law as applied to the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code violations claimed by Plaintiff. Based on their own independent investigations and evaluations, the Parties and their respective counsel are of the opinion that the Settlement for the consideration and on the terms set forth in this Motion are fair, reasonable and adequate and are in the best interests of Plaintiff, the Aggrieved Employees, and Defendants in light of all known facts and circumstances and the risks inherent in litigation.

11. The Parties further recognize that the issues presented in the Representative PAGA Claim are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the maximum potential benefits.

12. Plaintiff alleges that the strongest claims are that Plaintiff and other Aggrieved Employees were not provided timely, uninterrupted meal and rest breaks. In terms of Plaintiff's other claims for minimum wage violations and failure to compensate for all hours worked, no rounding issues were observed. The other associated PAGA claims are derivative to the meal/rest break and overtime allegations for which Defendant would not have additional liability for

inaccurate pay stubs, failure to pay all wages owed, failure to keep accurate payroll records, and failure to pay wages at the end of employment. Furthermore, there are no overtime violations observed in the sample because average hours worked were found to be 7.3 hours. Moreover, Aggrieved Employees did not have any claims for reimbursement of business expenses.

13. Plaintiff contends that the civil penalty statutes applicable to the Representative PAGA Claim are Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802 and 2699(f)(2). Under these civil penalty statutes, an employee who suffers a Labor Code violation, may be awarded a sum of money for each pay period in which he or she was underpaid. However, under Labor Code § 2699(e)(2), the Court can reduce an award of civil penalties if the award is unjust, arbitrary, oppressive, or confiscatory.

14. Under the civil penalty formulas applicable under PAGA, Plaintiff estimated the maximum possible exposure of approximately $131,559.00 for civil penalties for Plaintiff's strongest disputed claims for failure to provide meal and rest periods. Plaintiff's analysis, which Defendants vehemently dispute, revealed a 16.9% violation rate for either late, short, or interrupted meal periods at shifts of 5 hours or longer. However, Plaintiff's analysis also revealed that only 91.5% of the shifts were over 5 hours long for a total of 5064 pay periods with violations. As such, with the 16.9% violation rate, the maximum possible exposure would be $42,800.00, which is calculated as $50 penalty multiplied by 856 pay periods (16.9% of the 5064 pay periods). Plaintiff's analysis, which Defendants vehemently dispute, revealed a 16.9% violation rate for missed rest breaks. However, Plaintiff's analysis also revealed that 94.9% of shifts were long enough in duration to require a rest period which amounted to 5252 pay periods. At the same 16.9% rate for rest break violations, the maximum possible exposure would equate to $88,759 calculated at $100 penalty per pay period multiplied by 887.59 pay periods (16.9% of the 5252 pay periods). Assuming that Plaintiff's calculations and analysis is

accurate, the maximum exposure presumes that the Court will not reduce the penalty award as unjust, arbitrary, oppressive, or confiscatory.

15. Moreover, Plaintiff is aware of no California state courts awarding Plaintiff multiple PAGA penalties for the same violation for the same pay period under different Labor Code provisions. As such, one of the risks Plaintiff faces is that the Court would refuse to "stack" civil penalties arising under the various Labor Code statutes. Furthermore, judges have awarded extremely small sums to PAGA claimants in the past. In addition, Defendant would make an argument under *Naranjo v. Spectrum Security Services, Inc*., 40 Cal. App. 5th 444 (Cal. App. 2d Dist., Sept. 26, 2019) and other similar cases, that meal or rest period violations are not a predicate for civil penalties for improper wage statements and untimely final wages under Labor Code secs.201-203, 226, 226.3, and 2699. Defendant also adamantly disputes all of Plaintiff's allegations in the operative Complaint.

16. The source of penalties available is under PAGA, which allows employees to seek civil penalties for certain violations of the Labor Code so long as the penalties are not unjust, arbitrary, oppressive, or confiscatory. There are no State Court decisions under the PAGA to date with substantial awards of civil penalties. There is a substantial risk that the Court could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence of willful and intentional conduct. The PAGA expressly counsels against such awards. *See Lab. Code* § 2699(e)(2) ("…a court may award a lesser amount than the maximum civil penalty amount specified by this part 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."). Further, although, class certification is not required for a PAGA claim, Defendant could contend that Plaintiff should show that the PAGA claims are manageable.

17. As such, Defendant could also convince the Court to dismiss the claims due to

unmanageability. In *Ortiz v. CVS Caremark Corp.*, the court dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at *3–4 (N.D. Cal. 2014). The Ortiz court cited the "multitude of individualized assessments" that case would have required in ordering dismissal. *Id.* at *4. Several other courts have adopted *Ortiz*, and dismissed PAGA claims where, as here, there are a large number of allegedly aggrieved individuals whose claims require individual assessments. *See, e.g., Litty v. Merrill Lynch & Co.*, 2014 WL 5904904, at *3 (C.D. Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at *4 (C.D. Cal. 2015); *see also Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4 (E.D. Cal. 2014) (bifurcating trial of plaintiff's claim from representative claims: "in light of the number of potential aggrieved employees, judicial economy favors deferring the representative portion of the PAGA claim"); *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal. May 13, 2015). DS, ¶ 24. The risk of an unmanageable trial is heightened in a representative PAGA claim because the burden of proof rests with the plaintiff to establish violations of the Labor Code "with respect to each and every individual on whose behalf [they] seek[] to recover civil penalties." *Molina v. Dollar Tree Stores, Inc.*, 2013 U.S. Dist. LEXIS 138642, at *33-34 (C.D. Cal. Aug. 9, 2013); *Hibbs-Rines v. Seagate Techs, LLC*, 2009 WL 513496, at *4 (N.D. Cal. Mar. 2, 2009). Moreover, in a PAGA case the plaintiff must prove liability with respect to "each and every individual" through representative evidence – but without sacrificing the defendant's due process right to present proof of their affirmative defenses. *Elkins v. Superior Court*, 41 Cal. 4th 1337, 1357 (2007); *Walmart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2561 (2011); *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1, 33-34 (2014). Plaintiff is required to establish a violation of the Labor Code in each pay period of each and every one of the approximately 167 employees. The Court could find that this is an impractical task and require the Eligible Employees to bring individual claims instead of a PAGA representative claim.

18. The Parties further recognize that the issues presented in the Representative PAGA Claim are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the maximum potential benefits to the Subject Employees and Plaintiff from continued litigation, especially in the pandemic era where further and extensive litigation may cause businesses to shut down, resulting in no monetary compensation to Plaintiff, Plaintiff's attorneys, other Aggrieved Employees, and the State of California.

19. The settlement of the Representative PAGA Claim involves monetary relief to all Aggrieved Employees, Plaintiff, her attorneys, and the State of California.

20. Furthermore, Plaintiff recognizes that continued litigation presents significant risks that support a significant downward departure from Plaintiff's estimated civil penalties amount. In view of the risks, the Settlement represents a fair, adequate, and reasonable compromise amount for these claims and is in the best interest of Plaintiff and Eligible Employees and thus, warrants approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3. The PAGA settlement and its terms are fair, just, reasonable, adequate, and equitable to Defendant, Plaintiff, and the State, especially in light of the current economic climate, and are the product of good faith, and informed arms-length negotiations between the Parties consistent with public policy and fully comply with applicable provisions of law.

21. As such, the settlement of PAGA penalties in the gross sum of $80,000.00, of which 75% of the net amount after attorney's fees, attorney costs, and settlement administrator fees ($27,625.00) will be paid to the LWDA and 25% ($9,208.34) will be distributed to the Aggrieved Employees, is reasonable and appropriate under the circumstances.

Attorneys' Fees and Costs

22. I represent Plaintiff on a straight contingency basis. My firm's request for $26,666.66 in attorney fees and $12,000.00 in litigation costs is fair and reasonable. "Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery. *See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 47 fn. 11 (quoting *Shaw v. Toshiba America Information Systems, Inc.* (E.D. Tex. 2000) 91 F.Supp.2d 942, 972; *See also Lafitte v. Robert Half Int'l Inc.* (Cal. Aug. 11, 2016) 1 Cal.5th 480, 503, 376 P.3d 672, 686 (holding that courts can use the percentage method for the calculation of attorneys' fees). This is also consistent with Plaintiff's Counsel's experience in cases involving PAGA claims. This award is justified here because Plaintiff's counsel achieved a strong result for the Aggrieved Employees and the State while bearing the substantial burdens of contingency representation.

23. The litigation costs expended to aid in the representation of the Aggrieved Employees include the following: lawsuit filing fee of $454.22; PAGA initial filing fee of $75.00; $25.11 in postage; process server fees for service of the Summons and Complaint of $200.00; a mediation fee of $10,000.00 (for Plaintiff's portion of the mediation); jury fees of $161.39; efile fees of $33.04 to date; expert data analysis fee of $800.00; and additional postage and efile fees of $152.24 to bring this matter to a close. All of these costs are documented and reasonably incurred.

Plaintiff's Additional Released Claims

24. Plaintiff entered into a confidential individual settlement agreement with Defendant to settle her individual claims. As part of this confidential agreement, Plaintiff also provided Defendant with a general release of all claims, whether known or unknown, including unknown claims covered by Civil Code Section 1542. Plaintiff will provide the individual settlement to the Court upon request.

Notice of Settlement to the LWDA

25. Pursuant to Lab. Code § 2699(l)(2), Plaintiff submitted a copy of the Settlement with the LWDA at the same time the Settlement is being filed with the Court. True and correct copies of Plaintiff's submission with the LWDA and the confirmation email are collectively attached as **Exhibit "A"** to this declaration.

I declare under the penalty of perjury of the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on April 25, 2025, at Glendale, California.

____
SEVAG NIGOGHOSIAN,
Declarant

EXHIBIT “A”

PROOF OF SERVICE

RUSSO v WEST HOLLYWOOD HEALTHCARE et al.

23STCV27188

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 500 N. Central Ave., Suite 840, Glendale, Ca. 91203.

On April 25, 2025, I served the following document described as **DECLARATION OF SEVAG NIGOGHOSIAN** on all interested parties in this action by placing [X] a true copy [ ] the original thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

[X] (BY ELECTRONIC MAIL) I caused said document(s) to be transmitted to the email address(es) of the addressee(s) designated.

[] (BY FACSIMILE) The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2008(e)(4), I caused the machine to print a record of the transmission.

[] (BY MAIL, 1013a, 2015.5 C.C.P.)

[] I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, this document will be deposited with the U.S. Postal Service on this date with postage thereon fully prepaid at Glendale, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] (BY MESSENGER) I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and providing them to a messenger for personal service.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (FEDERAL) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on April 25, 2025, at Glendale, California.

/s/ vicki ghalbourjian

Vicki Ghalbourjian

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