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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

SANDRO ORTEGA-DOMINGUEZ, in a
Representative capacity only, and on behalf
of other members of the general public
similarly situated,

Plaintiff,

v.

RGC GASLAMP, LLC, a Delaware Limited
Liability Company; PENDRY SAN DIEGO,
LLC, a Delaware Limited Liability Company;
MONTAGE HOTELS & RESORTS, LLC; a
Nevada Limited Liability Company; and
DOES 1-10, inclusive

Defendants

CASE NO. 37-2023-00036893-CU-OE-CTL

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S UNOPPOSED EX PARTE
APPLICATION *RE: PAGA SETTLEMENT*
APPROVAL**

Date: February 19, 2025

Time: 8:30 a.m.

Dept: C-60

Judge: Hon. Matthew C. Braner

1 Plaintiff SANDRO ORTEGA-DOMINGUEZ submits his *Ex Parte* Application for Approval
2 of a PAGA representative Settlement. This Request is **unopposed**. The LWDA was timely notified
3 of this proposal, and does **not** object.

4 **I. SUMMARY OF APPLICATION**

5 This is a Labor Code §2698 *et seq.* “Wage and Hour” (“PAGA”) action brought against RGC
6 GASLAMP, LLC, PENDRY SAN DIEGO, LLC, and MONTAGE HOTELS & RESORTS,
7 LLC (“Defendants”). As this is a “PAGA” action only, the Limitations Period begins on June 21, 2019.
8 There are approximately **22,282** pay periods and **698** PAGA Members at issue. (Kuhn Decl., ¶3).

9 Following the exchange of discovery, analysis of numerous sets of time and wage data,
10 mediation before Louis Marlin, Esq., and arms length negotiations subsequent to the October 31, 2024
11 Mediation, the Parties reached a proposed settlement that includes a payment of penalties to the
12 LWDA. (Kuhn Decl., ¶4).

13 Based on the below figures, each PAGA Member would receive an average payment of
14 approximately **\$86.32**. This figure represents an average only, as the actual amounts paid will vary
15 depending on the amount of workweeks employed during the PAGA period. (Kuhn Decl., ¶5).

16 On **January 15, 2025**, Plaintiff’s counsel gave the LWDA notice of the instant Settlement.
17 (Kuhn Decl., ¶6). To date, Plaintiff’s counsel has not received notice that the LWDA would intervene.
18 (*Id.*)

19 On **January 28, 2025**, Plaintiff’s counsel uploaded via the LWDA’s electronic filing portal
20 the Settlement Agreement and provided notice of the hearing date. (Kuhn Decl., ¶7). To date,
21 Plaintiff’s counsel has not received notice that the LWDA would intervene. (*Id.*)

22 On **February 14, 2025**, Plaintiff’s counsel uploaded via the LWDA’s electronic filing portal
23 copies of this entire *ex parte* application, including the Notice, this supporting Memorandum,
24 Declaration, and Proposed Order & Judgment. (Kuhn Decl., ¶8). To date, Plaintiff’s counsel has not
25 received any opposition from the LWDA. (*Id.*)

26 The Total Value of the proposed Settlement is **\$397,500.00** which is broken down as follows:

27	*	\$5,000.00	Settlement Administrator Fees;
28	*	\$5,000.00	Representative Enhancement Bonus

- * **\$132,500.00** Attorneys' Fees (1/3 of total settlement value);
- * **\$14,000.00** Costs of Litigation.
- * Sub-Total of **\$241,000.00**. 75% (**\$180,750.00**) shall be assigned/paid to the LWDA as penalties.
- * The remaining 25% (**\$60,250.00**) in cash will be disbursed among all employees based on work weeks employed during the PAGA period.(Kuhn Decl., ¶9)

Given the above, the average payment to each individual employee will be approximately **\$86.32**. (*Id.*)

Further, there are no restrictions for any of the **698** employees to file individual actions, as the settlement agreement only covers PAGA claims. (Kuhn Decl., ¶10); **Exhibit A**: "Released Claims"§5, p. 8-9).

II. CONTROLLING LAW

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

"The superior court shall review and approve any settlement of any civil action filed pursuant to [PAGA]." Cal. Lab. Code. § 2699(l). In so doing, the court must consider whether the proposed "PAGA settlement is fair and adequate in view of the purposes and policies of the statute." *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1135 (N.D. Cal. 2016). Those purposes and policies include "benefit[ing] the public by augmenting the state's enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring noncompliance." *Id.* at 1132-33; Accord *Syed v. M-I LLC*, 2017 WL 714367, at *13 (E.D. Cal. Feb. 22, 2017) (concluding "the settlement amount related to plaintiffs' PAGA claims is fair, reasonable, and adequate in light of the public policy goals of PAGA.").

However, "neither the California legislature, nor the California Supreme Court, nor the

1 California Courts of Appeal, nor the [LWDA] has provided any definitive answer” as to what the
2 appropriate standard is for approval of a PAGA settlement. *Flores v. Starwood Hotels & Resorts*
3 *Worldwide, Inc.*, 2017 WL 2224265, at *1 (C.D. Cal. May 19, 2017).

4 A court may award a lesser amount than the maximum civil penalty amount if, based on the
5 facts and circumstances of the particular case, to do otherwise would result in an award that is unjust,
6 arbitrary and oppressive, or confiscatory. Lab. Code, § 2699(e)(2); *Amaral vs. Cintas Corp. No. 2*
7 (2008) 163 Cal.App.4th 1157, 1213-1214. *See e.g., Fleming v. Covidien Inc.*, 2011 WL 7563047, at
8 *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by 82%).

9 Courts have routinely approved PAGA settlements where the PAGA allocation reflects a much
10 smaller percentage of the gross settlement amount. There are numerous comparable cases in which the
11 total settlement exceeded \$2,000,000 and the PAGA penalty was \$10,000 or less. *See e.g. Hicks v.*
12 *Toys ‘R’ Us–Delaware, Inc.*, 2014 WL 4703915, at *1 (C.D. Cal. Sept. 2, 2014); *Franco v. Ruiz Food*
13 *Prods., Inc.*, 2012 WL5941801, at *14 (E.D. Cal. Nov. 27, 2012); *Garcia v. Gordon Trucking*, 2012
14 WL 5364575, at *3 (E.D. Cal. Oct. 31, 2012); *Chu v. Wells Fargo Investments, LLC*, 2011 WL
15 672645, at *1 (N.D. Cal. Feb. 16, 2011).

16 In *Haralson v. U.S. Aviation Servs. Corp.*, 383 F. Supp. 3d 959, 972 (N.D. Cal. 2019), the
17 Court discussed two policies for the approval of a PAGA claim:

18 Where PAGA claims are settled in the same agreement with the underlying Labor Code
19 claims, courts have also looked to the interplay of the two recoveries to determine
20 whether PAGA's purposes have been served. The *O'Connor* (Uber) court, for instance,
21 adopted a “sliding scale,” noting that “[b]y providing fair compensation to the class
22 members as employees and substantial monetary relief, a settlement not only vindicates
23 the rights of the class members as employees, but may have a deterrent effect upon the
24 defendant employer and other employers, an objective of PAGA.” 201 F. Supp. 3d at
25 1134. Similarly, “if the settlement resolves the important question of the status of
26 workers as employees entitled to the protection of the Labor Code or contained
27 substantial injunctive relief, this would support PAGA's interest in augmenting the
28 state's enforcement capabilities, encouraging compliance with Labor Code provisions,
and deterring noncompliance.” *Id.* at 1134-35.

Further, 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

1 for a definitive answer as to what precedent the court should follow in either approving or denying the
2 settlement. *Id.* The court was not able to find a definitive answer. *Id.* As such, the court followed the
3 rationale in *O'Connor v. Uber Techs., Inc.*, 201 F.Supp.3d 1110, 132-35 (N.D. Cal. 2016), which states
4 a court is permitted to approve a PAGA settlement if the settlement is “fair and adequate in view of
5 the purposes and policies of the statute.” *Id.*

6 In deciding whether the settlement was “fair and adequate,” the *Flores* court examined how
7 the parties “divvied up” the civil penalties under Section 2699(i) of the California Labor Code. *Flores*
8 at 1076-77. As the court felt the parties’ division of penalties was fair and adequate pursuant to the
9 statute, the court approved the settlement. *Id.*

10 **III. DISCUSSION**

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

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

15 The instant *Ex Parte* request is based on the fact that (1) the PAGA period “cutoff date” is
16 contingent on Court approval, any delay diminishes the amounts received by the impacted employees;
17 (2) Notice to certain ex-employees may be adversely impacted by further delay (*i.e.* ex-employees may
18 change their mailing address without filing a proper “forwarding address”). (Kuhn Decl., ¶11); See
19 **Exhibit A**: “Effective Date” p. 3).

20 Additionally, an expedient approval of this settlement will provide a direct benefit to the
21 impacted employees at issue. The “fixes” provide a guarantee of future Labor Code compliance, and
22 an immediate monetary benefit. It also allows Defendants (who admirably “stepped up” to address
23 these issues) the opportunity to move on, and focus on future business. (Kuhn Decl., ¶12).

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

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

1 Notice” attached thereto).

2 Specifically, Plaintiff alleges that he - and other employees - received “short,” “late,” or
3 “missing” Meal Periods, including those documented within Defendants’ Time Records. (Kuhn Decl.,
4 ¶13). Plaintiff also challenged whether Defendants maintained lawful Meal and Rest Period policies.
5 Plaintiff alleged he- and other employees -were not properly compensated due to Defendants’ failure
6 to maintain accurate Time Records. (*Id.*)

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

8 The catalyst of this litigation concerned allegations that Mr. Ortega-Dominguez was denied
9 legally compliant Meal and Rest Periods, and was not paid for all Overtime hours worked. (Kuhn
10 Decl., ¶14). Investigations completed by Plaintiff’s counsel revealed that Defendant’s timekeeping
11 policies and employee records were not in compliance with California law. (Kuhn Decl., ¶15).
12 However, these investigations also revealed that the “rate of violation” by Defendant was significantly
13 less than 100%. (*Id.*). On many of those occasions, it appears that Defendant did, in fact, comply with
14 the law. (*Id.*)

15 Based on the above, the maximum liability in a case of this type would be in the range of
16 **\$600,000.00 to \$700,000.00**. (Decl. Kuhn, ¶16).

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

22 Plaintiff’s counsel agrees with Her Honor, and with the provision of the Labor Code, that
23 penalties *should* be mitigated where violations are minimal (or rare), or where the employer makes
24 significant efforts to comply with the Labor Code. (Kuhn Decl., ¶18).

25 As the above factors exist in this case, it is the opinion of Plaintiff’s counsel that the settlement
26 is fair, adequate, and reasonable. Specifically, Plaintiff’s counsel’s understanding is that Defendant
27 has agreed to make changes to its policies, and amend them to the extent they do not comply with
28 California law. (Kuhn Decl., ¶19).

1 Plaintiff's counsel, William B. Sullivan has approximately 30 years of experience in "class
2 action" litigation, both as Plaintiff and Defense counsel. (Decl. Kuhn, ¶20). Plaintiff's counsel, Eric
3 K. Yaeckel, has over 14 years of experience prosecuting class and representative action claims under
4 the California Labor Code. (*Id.*) Plaintiff's Counsel, Ryan T. Kuhn, has over 6 years of experience
5 prosecuting class and representative action claims under the California Labor Code. Plaintiff's counsel,
6 William B. Sullivan and Eric K. Yaeckel, are the attorneys of record in a matter that was recently heard
7 (and favorably decided) before the California Supreme Court titled *Donohue v. AMN Servs., LLC*
8 (2021) 11 Cal.5th 58. (*Id.*) The *Donohue* matter was a certified class and PAGA action. (*Id.*)

9 Plaintiff's counsel were lead counsel on approximately 40 employment "wage and hour" claims
10 with class action, or representative action allegations. (*Id.*) Based on said experience, it is the opinion
11 of Plaintiff's counsel that this settlement represents a fair and adequate payment. (Kuhn Decl., ¶21).

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

13 While Labor Code section 2699(*l*) requires a court to "review and approve any penalties sought
14 as part of a proposed settlement agreement," it does not provide any guidance as to what is considered
15 an 'adequate' allocation of these penalties. However, the California Court of Appeal has held that an
16 allocation of **zero dollars** to resolve PAGA claims may be appropriate:

17 The Nordstrom Commission Cases settlement agreement identifies liability for PAGA
18 penalties as a claim against Nordstrom and includes the following language: "The
19 Parties allocate \$0 to any Private Attorneys General Act penalty claim under Labor
20 Code § 2699 et seq., for penalty claims based on the Released Claims. During the Class
21 Period, Nordstrom paid Putative Class Members' commissions pursuant to a
22 commission plan that it contends was approved by the United States District Court in
Rios, and consequently, Nordstrom contends no claim for penalties of any nature is
valid." Thus, the PAGA penalty claims were at issue, and were resolved as a part of the
overall settlement of the case. We find no abuse of discretion in the trial court's
approval of the settlement agreement containing these terms.
Nordstrom Com'n Cases (2010) 186 Cal.App.4th 576, 589.

23 Moreover, District Courts in California have routinely approved settlement agreements which
24 allocate **less than 1%** of the overall settlement amount to PAGA penalties. *See, e.g., Chu v. Wells*
25 *Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011, No. C 05 4526 MHP) 2011 WL 672645, at *1
26 (approving allocation of \$10,000.00 to PAGA penalties out of \$6,900,000.00 settlement); see also
27 *Schiller v. David's Bridal, Inc.* (E.D. Cal., June 11, 2012, No. 1:10 CV 00616 AWI) 2012 WL
28 2117001, at *14 (approving allocation of \$7,500.00 to PAGA penalties out of \$518,245.00 settlement).

1 Defendants, and its counsel, deserve credit for their willingness to consider - and address - the
2 allegations. Specifically, Defense Counsel (who have extensive experience and knowledge in “Wage
3 and Hour” litigation) agreed to produce a substantial amount of documents and information necessary
4 to evaluate the parameters of settlement. Following the a full day Mediation and arms-length
5 negotiations, the parties have reached a proposed settlement that includes a payment of penalties under
6 PAGA. (Kuhn Decl., ¶22).

7 Here, the parties seek to allocate **\$241,000.00** of the total settlement to the Total Value of the
8 PAGA Fund. Of this amount, the LWDA will receive **\$\$180,750.00**. (Kuhn Decl., ¶9, **Exhibit A**). The
9 remaining **\$60,250.00** will be allocated and distributed among the current or ex-employees within the
10 PAGA representation period. (*Id.*) Each PAGA Member would receive an average payment of
11 approximately **\$86.32**. (*Id.*)

12 The parties contend the settlement agreement amount is fair, adequate, and reasonable. (Kuhn
13 Decl., ¶ 22). Moreover, the PAGA settlement does not bar any employee from pursuing their own
14 individual Labor Code claims. (Decl. Kuhn ¶9; **Exhibit A:Released Claims**” §5, p. 8-9). The release
15 only applies to the PAGA claims for penalties, based upon the allegations in Plaintiff’s operative
16 Complaint. (*Id.*)

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

18 On **January 15, 2025**, Plaintiff’s counsel gave the LWDA notice of the instant Settlement.
19 (Kuhn Decl., ¶5). To date, Plaintiff’s counsel has not received notice that the LWDA would intervene.
20 (*Id.*)

21 On **January 28, 2025**, Plaintiff’s counsel uploaded via the LWDA’s electronic filing portal
22 the Settlement Agreement and provided notice of the hearing date. (Kuhn Decl., ¶6). To date,
23 Plaintiff’s counsel has not received notice that the LWDA would intervene. (*Id.*)

24 On **February 14, 2025**, 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. (Kuhn Decl., ¶7). To date, Plaintiff’s counsel has not
27 received any opposition from the LWDA. (*Id.*)

28 To date, Plaintiff has not received a response from the LWDA regarding the proposed

1 settlement. If the LWDA contacts Plaintiff's counsel at any time prior to the February 19, 2025
2 hearing, Plaintiff's counsel will provide an updated declaration to the Court. (Kuhn Decl., ¶24).

3 **IV. CONCLUSION**

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

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

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10 Dated: February 14, 2025

SULLIVAN & YAECKEL LAW GROUP, APC

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12 _____
13 Eric K. Yaeckel
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15 Attorneys for Plaintiff SANDRO ORTEGA-
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