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10 DAVID HONG

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN BERNARDINO

DAVID HONG,

Plaintiff,

v.

CHINO CENTRAL LIQUOR PLUS INC.;
DALE'S LIQUOR INC.; RANCHO
MARKET LIQUOR INC.; EL RANCHITO
MARKET INC.; ROSIES MINI MART &
LIQUOR; TIGERS LIQUOR; BROOKSIDE
MARKET LIQUOR; A&F LIQUOR;
VALLEY LIQUOR MARKET; VANS
LIQUOR; JACOB DIAB; and DOES 1-50,
inclusive,

Defendants.

Case No.: CIVSB2325525

*[Assigned for all purposes to Hon. David E.
Driscoll in Department S22 – SBJC]*

**NOTICE OF MOTION AND JOINT
MOTION TO APPROVE AMENDED PAGA
SETTLEMENT AGREEMENT**

*[Declaration of Ted K. Lippincott and
[Proposed] Order Filed Concurrently Herewith]*

Date: July 22, 2025

Time: 8:30 a.m.

Department: Department S22 – SBJC

Complaint Filed: October 12, 2023

PLEASE TAKE NOTICE that at 8:30am on July 22, 2025, or as soon thereafter as the matter may be heard, in Department S22 – SBJC of the above-entitled court, located at 247 W 3rd Street, San Bernardino, CA 92415, the parties in the above-captioned matter will and hereby do move for an order approving the amended settlement of Plaintiff David Hong's penalty claims under the Private Attorneys General Act, Cal. Labor Code § 2698, et seq. ("PAGA").

This Joint Motion to Approve Amended PAGA Settlement Agreement ("Motion") is made on the grounds that: (1) the parties have reached a settlement in this action that includes the resolution of a PAGA claim; (2) the parties are required to seek and obtain Court approval for

1 settlement of any such claim pursuant to Labor Code § 2699(1)(2); (3) defendants in this matter do
2 not oppose Plaintiff's motion and, in fact, stipulated to it; (4) the parties' PAGA settlement is fair
3 and appropriate; and (5) the amended settlement agreement conforms with the Court's directive
4 provided at the April 24, 2025 hearing on the parties' original Joint Motion to Approve PAGA
5 Settlement to reduce the amount allocated towards Plaintiff's attorneys' fees to one-third of the
6 total settlement amount.

7 This Motion is based on this notice, the attached Memorandum of Points and Authorities,
8 the Declaration of Ted K. Lippincott in Support of Joint Motion to Approve Amended PAGA
9 Settlement Agreement filed concurrently herewith, the Court's instructions provided at the April
10 24, 2025 hearing, and upon such further oral and written evidence as may be submitted at or before
11 the time of the hearing of this Motion.

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14 DATED: May 14, 2025

LEVINE & BLIT LLP

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16 By:



Ted K. Lippincott, Esq.
Attorneys for Plaintiff DAVID HONG

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND STATEMENT OF FACTS**

3 Plaintiff David Hong (“Hong” or “Plaintiff”) worked as a store clerk/manager for defendant
4 Chino Central Liquor Plus, Inc. (“Chino Central”), a liquor store located in Chino, California, for
5 over 10 years until he resigned on or about February 21, 2023. Plaintiff alleges that he was not paid
6 all minimum wages owed, was not paid overtime or double time pay, was not provided proper meal
7 or rest breaks, was not reimbursed all business expenses, did not receive accurate wage statements,
8 and was not paid all wages due at separation.

9 On July 31, 2023, Plaintiff filed a notice of potential violations under the Private Attorneys
10 General Act of 2004 (“PAGA”) (California Labor Code § 2698 *et seq.*) with the Labor and
11 Workforce Development Agency (“LWDA”) (the “PAGA Notice”). *Declaration of Ted K.*
12 *Lippincott in Support of Joint Motion to Approve PAGA Settlement*, (“*Lippincott Decl.*”) at ¶ 3. A
13 true and correct copy of the PAGA Notice is attached as Exhibit A to the Declaration of Ted K.
14 Lippincott filed concurrently herewith. The LWDA did not notify Plaintiff of its intent to
15 investigate the alleged penalty claims within the 65-day notice period provided by Labor Code §
16 2699.3(a)(2)(A). Thus, Plaintiff exhausted his administrative remedies pursuant to PAGA.

17 On October 12, 2023, Plaintiff filed an individual wage and hour and PAGA representative
18 action in Superior Court of California, County of San Bernardino, Case No. CIVSB2325525 (the
19 “Complaint”), against Chino Central, as well its purported owner, Jacob Diab (“Diab”), and 10
20 other affiliated liquor stores that Plaintiff is informed and believes Diab operates as a single
21 integrated enterprise: Dale’s Liquor Inc; Rancho Market Liquor Inc., El Ranchito Market Inc.,
22 Rosies Mini Mart & Liquor; Tigers Liquor; Brookside Market Liquor; A&F Liquor; Valley Liquor
23 Market; and Vans Liquor (collectively, “Defendants” and together with Plaintiff the “Parties”).
24 *Lippincott Decl.* at ¶ 4. The Complaint includes nine causes of action seeking to recover damages
25 and restitution for Plaintiff’s individual claims: (1) failure to pay minimum wage, (2) failure to pay
26 overtime wages, (3) meal break violations, (4) rest break violations, (5) late payment of wages, (6)
27 failure to timely pay wages at separation, (7) wage statement violations and record keeping
28 violations, (8) failure to reimbursement business expenses; and (9) unfair business practices. The

1 Complaint also includes a claim for civil penalties under PAGA on behalf of all non-exempt
2 employees working for Defendants during the claim period. *Id.* at ¶ 4.

3 The Parties commenced meaningful settlement talks after the Complaint was filed. Plaintiff
4 therefore agreed to extend Defendants' deadline to file a responsive pleading while settlement talks
5 were pending. Defendants have not filed a responsive pleading to date. *Lippincott Decl.* at ¶ 5.

6 On April 24, 2025, the Court considered the Parties' original Joint Motion to Approve
7 PAGA Settlement and directed the Parties to amend the settlement agreement terms and reduce the
8 amount allocated towards Plaintiff's attorneys' fees to one-third (1/3) of the overall settlement
9 amount and to redistribute the additional amount elsewhere, such as to Plaintiff's individual claims.
10 *Lippincott Decl.* at ¶ 6.

11 The Parties have complied with the Court's directive. On May 13, 2025, the Parties entered
12 into an amended Individual & PAGA Settlement Agreement (the "Amended PAGA Settlement
13 Agreement"), a true and correct copy of which is attached as Exhibit B to the Declaration of Ted
14 K. Lippincott filed concurrently herewith, which reduced the amount allocated towards Plaintiff's
15 attorneys' fees to one-third of the overall settlement amount and redistributed the additional \$6,250
16 towards Plaintiff's individual claims. *Lippincott Decl.* at ¶ 7. Under the Amended PAGA
17 Settlement Agreement, Defendants have agreed to make a total settlement payment of \$48,750 (the
18 "Settlement Payment") as a non-reversionary settlement to resolve both Plaintiff's individual
19 claims as well as the PAGA claim. The Settlement Payment is be allocated as follows, subject to
20 the Court's approval:

- 21 • \$5,000 to Plaintiff as compensation for his alleged individual unpaid wages, subject
22 to an IRS Form W-2;
- 23 • \$20,500 to Plaintiff as compensation for alleged statutory penalties, liquidated
24 damages, and interest owed on his individual claims, subject to an IRS Form 1099;
- 25 • \$16,250 to Plaintiff's counsel as attorneys' fees;
- 26 • \$2,000 to Plaintiff's counsel as reimbursement for out-of-pocket litigation expenses;
- 27 • \$2,500 to the settlement administrator, ILYM Group, Inc.; and
- 28 • \$2,500 to resolve the PAGA claim ("PAGA Payment"), apportioned as follows:

- \$1,875 paid directly to the LWDA (75% of PAGA Payment)
- \$650 (25% of PAGA Payment) allocated amongst the 13 aggrieved employees in a pro rata share based on their number of pay periods worked during the relevant PAGA claim period, which is defined as October 12, 2022, until the date the Court grants approval of the Amended PAGA Settlement Agreement.

As demonstrated below and in the accompanying Declaration of Ted K. Lippincott, Plaintiff has complied with the PAGA statutory requirements, and the Amended PAGA Settlement Agreement warrants the Court's approval.

II. THE COURT SHOULD, AND IS AUTHORIZED TO, APPROVE THE AMENDED PAGA SETTLEMENT AGREEMENT IN THIS CASE

"The superior court shall review and approve any settlement of any civil action filed" under PAGA. Labor Code § 2699(1)(2). The Court has broad discretion to approve a settlement the Court determines is "fair, adequate, and reasonable" in light of the circumstances of the case (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399, 407 (2010)); however, the Court is under no obligation to award any amount to PAGA penalties in order to approve the Parties' settlement. *See Nordstrom Com'n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving PAGA settlement and release allocating \$0 to PAGA claim).

The valuation of PAGA claims must be considered in light of the substantial risk of losing or diminution in value of the claims at trial. Labor Code Section 2699(e) provides that a court has discretion to award PAGA penalties and to determine the amount of penalties to award.

The proposed Amended PAGA Settlement Agreement at issue is fair, adequate, and reasonable for numerous reasons. For one, Defendants strongly disclaim any liability for either Plaintiff's individual claims or the alleged PAGA violations, and they further dispute that the Court would award any PAGA penalties as a result of any alleged noncompliance.

Additionally, Defendants have only identified 13 potential aggrieved employees, and critically, these individuals were employed across 10 distinct business entities, as opposed to all being employed directly by Chino Central (Plaintiff's direct employer). Plaintiff therefore cannot obtain civil penalties on behalf of all of these potential aggrieved employees without first

1 establishing that the named defendant business entities were all Plaintiff's collective employer for
2 PAGA purposes. This poses a "heavy burden" for Plaintiff because "[c]orporate entities are
3 presumed to have separate existences, and the corporate form will be disregarded only when the
4 ends of justice require this result." *Laird v. Capital Cities/Abc*, 68 Cal.App.4th 727, 737 (1998). If
5 Plaintiff is unable to establish that the various named defendants should be treated as his employer,
6 the number of aggrieved employees at issue could be reduced to as few as three non-exempt
7 employees that worked for defendant Chino Central during the PAGA period—which would
8 significantly reduce the potential PAGA exposure.

9 Further complicating matters, many of the 13 potential aggrieved employees were subject
10 to different payment and employment practices (i.e. some worked overtime but not others), which
11 could further decrease the number of PAGA violations at issue.

12 It is also fair to assume that the complexities of the PAGA claim at issue, as well as the
13 relatively small number of potential aggrieved employees, would reduce the motivation for any of
14 the potential aggrieved employees to retain counsel and pursue PAGA violations on their own.
15 However, they are still able to pursue their individual claims if they choose to do so because, other
16 than Plaintiff, the aggrieved employees are not releasing their individual claims, known or
17 unknown, under the Amended PAGA Settlement Agreement. Rather, the proposed release for the
18 aggrieved employees is narrowly tailored to release only claims for civil penalties under PAGA
19 predicated on the Labor Code and IWC Wage Order violations alleged, or that reasonably could
20 have been alleged, based on the facts stated in the PAGA Notice and Complaint. The Settlement
21 Administrator will send a copy of the notice attached to the Amended PAGA Settlement Agreement
22 as Exhibit A to the aggrieved employees at the time of payment, which will notify them of the
23 limited scope of their claims being released, among other things.

24 With these facts in mind, the proposed amount of \$2,500 that is allocated to resolve the
25 PAGA claim is fair and reasonable. This represents over 5% of the total settlement amount, which
26 is favorable to settlements that have been approved by other courts. *See Ahmed v. Beverly Health*
27 *& Rehab. Servs., Inc.*, 2018 WL 746393, at *10 (E.D. Cal. 2018) (approving PAGA settlement of
28 \$4,500, or 1% of the total settlement amount); *Hicks v. Toys 'R' Us-Delaware, Inc.*, 2014 WL

1 4703915, at *1 (C.D. Cal. 2014) (approving PAGA settlement of \$5,000, or 0.12% of the total
2 settlement amount); *Schiller v. David's Bridal, Inc.*, 2012 WL 2117001, at *2 (E.D. Cal. 2012)
3 (approving PAGA settlement of \$7,500, or 0.14% of the total settlement amount); *Hopson v.*
4 *Hanesbrands Inc.*, 2009 WL 928133, at *9 (N.D. Cal. 2009) (approving PAGA settlement of
5 \$1,500, or .037% of the total settlement amount).

6 In compliance with the Court's directive at the April 24, 2025 hearing, the Amended PAGA
7 Settlement Agreement redistributes \$6,250 from Plaintiff's attorneys' fees to Plaintiff's individual
8 claims, resulting in \$16,250 being allocated towards Plaintiff's attorneys' fees (one-third of the
9 overall settlement) and \$20,500 to Plaintiff's individual claims subject to an IRS form 1099. This
10 allocation is reasonable under Labor Code § 2699(g)(1). Given that there are only 13 potential
11 aggrieved employees—and the serious risk that this number could be reduced to as little as three—
12 the Settlement Payment is predominately allocated to compensate Plaintiff for his significant
13 individual wage and hour claims, and Plaintiff has authorized this attorney fee allocation as part of
14 the resolution of such claims.

15 Finally, Plaintiff has complied with the procedural requirements under PAGA, including
16 by submitting a copy of the Amended PAGA Settlement Agreement to the LWDA at the same time
17 it was submitted to the Court with this Motion on May 14, 2025, per Labor Code § 2699(s)(1)(2).
18 *Lippincott Decl.* at ¶ 10.

19 **III. CONCLUSION**

20 In light of the foregoing facts and authorities, and the matters set forth in the Declaration of
21 Ted K. Lippincott in Support of Joint Motion to Approve Amended PAGA Settlement Agreement
22 filed concurrently herewith, the Parties hereby respectfully requests that this Court issue an Order
23 granting approval of the Amended PAGA Settlement Agreement.

24
25 DATED: May 14, 2025

LEVINE & BLIT LLP

26
27 By:



28 Ted K. Lippincott, Esq.
Attorneys for Plaintiff DAVID HONG

1 DATED: May 14, 2025

SANDERS ROBERTS LLP

2
3 By:


Tara Kearns, Esq.

Melvin Felton, Esq.

Attorneys for Defendants

CHINO CENTRAL LIQUOR PLUS INC.;

DALE'S LIQUOR INC.; RANCHO

MARKET LIQUOR INC.; EL RANCHITO

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