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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 PAGA
SETTLEMENT**

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

Date: April 24, 2025

Time: 8:30 a.m.

Department: Department S22 – SBJC

Complaint Filed: October 12, 2023

PLEASE TAKE NOTICE that at 8:30am on April 24, 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 settlement of Plaintiff David Hong's penalty claims under the Private Attorneys General Act, Cal. Labor Code § 2698, et seq. ("PAGA").

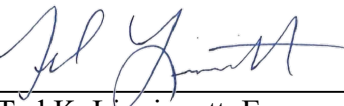
This motion is made on the grounds that: (1) the parties have reached a settlement in this action that includes the resolution of a PAGA claim; (2) the parties are required to seek and obtain Court approval for settlement of any such claim pursuant to Labor Code § 2699(1)(2); (3)

1 defendants in this matter do not oppose Plaintiff's motion and, in fact, stipulated to it; and (4) the
2 parties' PAGA settlement is fair and appropriate.

3 This motion is based on this notice, the attached Memorandum of Points and Authorities,
4 the Declaration of Ted K. Lippincott in Support of Joint Motion to Approve PAGA Settlement filed
5 concurrently herewith, and upon such further oral and written evidence as may be submitted at or
6 before the time of the hearing of this motion.

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9 DATED: March 12, 2025

LEVINE & BLIT LLP

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11 By: 
12 Ted K. Lippincott, Esq.
13 Attorneys for Plaintiff DAVID HONG
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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”). *Lippincott Decl.* at ¶ 4. The Complaint
24 includes nine causes of action seeking to recover damages and restitution for Plaintiff’s individual
25 claims: (1) failure to pay minimum wage, (2) failure to pay overtime wages, (3) meal break
26 violations, (4) rest break violations, (5) late payment of wages, (6) failure to timely pay wages at
27 separation, (7) wage statement violations and record keeping violations, (8) failure to
28 reimbursement business expenses; and (9) unfair business practices. The Complaint also includes

1 a claim for civil penalties under PAGA on behalf of all non-exempt employees working for
2 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 February 6, 2025, Plaintiff and Defendants entered into an Individual & PAGA
7 Settlement Agreement (the "Settlement Agreement"), a true and correct copy of which is attached
8 as Exhibit B to the Declaration of Ted K. Lippincott filed concurrently herewith. *Lippincott Decl.*
9 at ¶ 6. Under the Settlement Agreement, Defendants have agreed to make a total settlement
10 payment of \$48,750 (the "Settlement Payment") as a non-reversionary settlement to resolve both
11 Plaintiff's individual claims as well as the PAGA claim. Subject to the Court's approval, the
12 Settlement Payment is be allocated as follows:

- 13 • \$5,000 to Plaintiff as compensation for his alleged individual unpaid wages, subject
14 to an IRS Form W-2;
- 15 • \$14,250 to Plaintiff as compensation for alleged statutory penalties, liquidated
16 damages, and interest owed on his individual claims, subject to an IRS Form 1099;
- 17 • \$22,500 to Plaintiff's counsel as attorneys' fees;
- 18 • \$2,000 to Plaintiff's counsel as reimbursement for out-of-pocket litigation expenses;
- 19 • \$2,500 to the settlement administrator, ILYM Group, Inc.; and
- 20 • \$2,500 to resolve the PAGA claim ("PAGA Payment"), apportioned as follows:
 - 21 ○ \$1,875 paid directly to the LWDA (75% of PAGA Payment)
 - 22 ○ \$650 (25% of PAGA Payment) allocated amongst the 13 aggrieved employees
23 in a pro rata share based on their number of pay periods worked during the
24 relevant PAGA claim period, which is defined as October 12, 2022, until the
25 date the Court grants approval of the Settlement Agreement.

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

1 **II. THE COURT SHOULD, AND IS AUTHORIZED TO, APPROVE THE PAGA**
2 **SETTLEMENT IN THIS CASE**

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

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

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

17 Additionally, Defendants have only identified 13 potential aggrieved employees, and
18 critically, these individuals were employed across 10 distinct business entities, as opposed to all
19 being employed directly by Chino Central (Plaintiff’s direct employer). Plaintiff therefore cannot
20 obtain civil penalties on behalf of all of these potential aggrieved employees without first
21 establishing that the named defendant business entities were all Plaintiff’s collective employer for
22 PAGA purposes. This poses a “heavy burden” for Plaintiff because “[c]orporate entities are
23 presumed to have separate existences, and the corporate form will be disregarded only when the
24 ends of justice require this result.” *Laird v. Capital Cities/Abc*, 68 Cal.App.4th 727, 737 (1998). If
25 Plaintiff is unable to establish that the various named defendants should be treated as his employer,
26 the number of aggrieved employees at issue could be reduced to as few as three non-exempt
27 employees that worked for defendant Chino Central during the PAGA period—which would
28 significantly reduce the potential PAGA exposure.

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

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

16 With these facts in mind, the proposed amount of \$2,500 that is allocated to resolve the
17 PAGA claim is fair and reasonable. This represents over 5% of the total settlement amount, which
18 is favorable to settlements that have been approved by other courts. *See Ahmed v. Beverly Health*
19 *& Rehab. Servs., Inc.*, 2018 WL 746393, at *10 (E.D. Cal. 2018) (approving PAGA settlement of
20 \$4,500, or 1% of the total settlement amount); *Hicks v. Toys ‘R’ Us–Delaware, Inc.*, 2014 WL
21 4703915, at *1 (C.D. Cal. 2014) (approving PAGA settlement of \$5,000, or 0.12% of the total
22 settlement amount); *Schiller v. David’s Bridal, Inc.*, 2012 WL 2117001, at *2 (E.D. Cal. 2012)
23 (approving PAGA settlement of \$7,500, or 0.14% of the total settlement amount); *Hopson v.*
24 *Hanesbrands Inc.*, 2009 WL 928133, at *9 (N.D. Cal. 2009) (approving PAGA settlement of
25 \$1,500, or .037% of the total settlement amount).

26 The proposed Settlement Agreement allocates \$22,500 towards attorneys’ fees to Plaintiff’s
27 counsel, which is reasonable under Labor Code § 2699(g)(1). Given that there are only 13 potential
28 aggrieved employees—and the serious risk that this number could be reduced to as little as three—

1 the Settlement Payment is predominately allocated to compensate Plaintiff for his significant
2 individual wage and hour claims, and Plaintiff has authorized this attorney fee allocation as part of
3 the resolution of such claims.

4 Finally, Plaintiff has complied with the procedural requirements under PAGA, including
5 by submitting a copy of the proposed Settlement Agreement to the LWDA at the same time it was
6 submitted to the Court, per Labor Code § 2699(s)(1)(2). *Lippincott Decl.* at ¶ 9.

7 **III. CONCLUSION**

8 In light of the foregoing facts and authorities, and the matters set forth in the Declaration of
9 Ted K. Lippincott in Support of Joint Motion to Approve PAGA Settlement filed concurrently
10 herewith, the parties hereby respectfully requests that this Court issue an Order granting approval
11 of the PAGA Settlement Agreement.

12
13 DATED: March 12, 2025

LEVINE & BLIT LLP

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15 By:



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

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19 DATED: March 7, 2025

SANDERS ROBERTS LLP

20
21 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
MARKET INC.; ROSIES MINI MART &
LIQUOR; TIGERS LIQUOR; BROOKSIDE
MARKET LIQUOR; A&F LIQUOR;
VALLEY LIQUOR MARKET; VANS
LIQUOR; and JACOB DIAB