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Attorneys for Plaintiff Ashley Nunez Estrada

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By A. Anzalone ,Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ASHLEY NUNEZ ESTRADA *et al.*

Plaintiff,

vs.

BAXTER HOTEL GROUP, INC. *et al.*

Defendants.

Case No. 37-2023-00052417-CU-OE-CTL

Hon. Katherine A. Bacal
Dept. 63

**Notice of Entry of Order Granting
Approval and Entering Judgment**

Action Filed: December 4, 2023

1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE
2 TAKE NOTICE THAT:

3 1. On October 16, 2024, the Court entered the Order and Judgment Granting Approval of
4 PAGA Action Settlement and Attorneys' Fees and Costs and Entering Judgment attached hereto as
5 Exhibit 1.

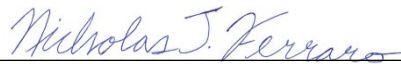
6 2. A conformed copy of this Notice will be submitted to the LWDA via its online
7 electronic portal in accordance with Labor Code § 2699(1)(3).

8 3. Notice of the Court's final ruling and entry of judgment is hereby provided.

9
10 Respectfully submitted,

11
12 Dated: November 4, 2024

Ferraro Vega Employment Lawyers, Inc.

13 

14 Nicholas J. Ferraro

15 *Attorneys for Plaintiff Ashley Nunez Estrada*

Exhibit 1

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Attorneys for Defendant Baxter Hotel Group, Inc.

ELECTRONICALLY FILED
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10/11/2024 10:09:36 AM

Clerk of the Superior Court
By J. Siharath , Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ASHLEY NUNEZ ESTRADA *et al.*

Plaintiffs,

vs.

BAXTER HOTEL GROUP, INC. *et al.*

Defendants.

Case No. 37-2023-00052417-CU-OE-CTL

Hon. Katherine A. Bacal
Dept. 69

**Joint Stipulation Requesting PAGA
Settlement Approval; ~~Proposed~~ Order
Approving PAGA Settlement and Entering
Judgment**

[Filed concurrently with Declaration of Nicholas
J. Ferraro and Declaration of Plaintiff]

Action Filed: December 4, 2023

1 Plaintiff Ashley Nunez Estrada ("Plaintiff") and Defendant Baxter Hotel Group, Inc.
2 ("Defendant") have reached a settlement of Plaintiff's claims brought under the Private Attorneys
3 General Act ("PAGA"). The Parties, through this Stipulation, request that the Court sign the Proposed
4 Order approving the PAGA Settlement under Labor Code section 2699(s)(2). The relevant facts
5 related to the Settlement are detailed below and in the declaration of Nicholas J. Ferraro, filed
6 concurrently herewith.

7 I. BACKGROUND

8 On September 25, 2023, Plaintiff submitted a notice to the Labor and Workforce Development
9 Agency ("LWDA") asserting claims for civil penalties under the PAGA on behalf of themself and the
10 Covered Employees. *See* Declaration of Nicholas J. Ferraro ("Ferraro Decl."), ¶ 2. On December 4,
11 2023, Plaintiff filed a PAGA Representative Action in San Diego Superior Court. Ferraro Decl., ¶ 3.
12 In the Complaint, Plaintiff requested civil penalties under California Labor Code section 2699, *et seq.*

13 On July 17, 2024, the parties attended mediation with Chris Barnes, Esq. The Parties reached
14 a resolution of Plaintiff's PAGA Action after engaging in settlement discussions and an exchange of
15 information prior to the mediation. Ferraro Decl., ¶¶ 12-13. The Parties fully executed the Settlement
16 of Private Attorneys General Act Claims on August 29, 2024. Ferraro Decl., ¶ 13, Ex. 1. A copy of
17 the Settlement is attached to the declaration of Nicholas J. Ferraro as Exhibit 1.

18 On August 29, 2024, Plaintiff electronically submitted Notice of Proposed Settlement of this
19 PAGA action to the LWDA via the LWDA's online filing system. Ferraro Decl., ¶ 14.

20 II. LEGAL STANDARD

21 A. The PAGA Settlement May Be Approved.

22 PAGA settlements require judicial review and approval. Cal. Lab. Code § 2699(s)(2). The
23 criteria for review and approval is not well-developed, but when a PAGA claim is settled, the relief
24 provided for must be genuine and meaningful, consistent with the purpose of the statute to benefit the
25 public. *See Haralson v. U.S. Aviation Services Corp.* (N.D. Cal. 2019) 383 F. Supp.3d 959, 971-972.
26 PAGA representative actions are different than class actions. *Kim v. Reins Int'l Inc.* (2020) 9 Cal. 5th
27 73, 86. As such, the settlement of a PAGA action is not evaluated subject to the same requirements
28 as class actions, though courts like this one can and often do consider the factors applicable to class

1 action settlements when reviewing PAGA settlements. “[A] trial court should evaluate a PAGA
2 settlement to determine whether it is fair, reasonable, and adequate in view of PAGA’s purposes to
3 remediate present labor law violations, deter future ones, and to maximize enforcement of state labor
4 laws.” *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. However, the factors used to assess
5 the reasonableness of class settlements may be used for PAGA settlements. *See, e.g., Dunk v. Ford*
6 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *Wershba v. Apple Computer* (2001) 91 Cal.App.4th
7 224, 240; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116 (factors include the
8 (1) strengths of plaintiffs’ case; (2) risk, expense, complexity, and duration of further litigation;
9 (3) amount offered in settlement; (4) discovery and investigation completed; (5) experience and views
10 of counsel; and (6) governmental participant involvement.

11 As detailed in full in the **Declaration of Nicholas J. Ferraro**, each of these factors support
12 approval of the PAGA settlement.

13 Defendant disputes all claims and reiterates that it has resolved this case without admission of
14 liability.

15 **B. The Fees and Costs May Be Approved.**

16 The Settlement authorizes attorneys’ fees of up to 33.33% of the Gross Settlement Amount.
17 Ferraro Decl., ¶ 19, Ex. 1. The purpose of the percentage method is to avoid unjust enrichment by
18 spreading the litigation costs proportionally among all the beneficiaries. *See, e.g., Lealao v. Beneficial*
19 *Cal., Inc.* (2000) 82 Cal. App. 4th 19, 47. This approach incentivizes lawyers to undertake risks of
20 time and resources to vindicate the public interest and protect the policies underlying the wage laws.
21 In the case of a common fund—like the one in this case where there is no reversion or claims process—
22 the percentage method is the preferred method:

23 The recognized advantages of the percentage method—including relative ease
24 of calculation, alignment of incentives between counsel and the class, a better
25 approximation of market conditions in a contingency case, and the
26 encouragement it provides counsel to seek an early settlement and avoid
unnecessarily prolonging the litigation ... —convince us the percentage
method is a valuable tool that should not be denied our trial courts.

27 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal. 5th 480, 503 (citations omitted). “[R]egardless
28 whether the percentage method or the lodestar method is used, fee awards in class [and representative]

1 actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43,
2 66, n. 11. Defendant does not oppose a request by Plaintiff’s counsel for attorneys’ fees in an amount
3 that does not exceed 33.33% of the Gross Settlement Amount (*i.e.*, \$53,328). Plaintiff contends that
4 attorneys’ fees to Plaintiff’s counsel in the amount of 33.33% of the Settlement is reasonable and
5 should be approved, which are further authorized by statute via Labor Code § 2699(k)(1). *See*
6 generally Ferraro Decl., ¶¶ 21-28.

7 Should the Court decide to perform an optional lodestar crosscheck¹, the requested attorneys’
8 fees represent a lodestar of 1.89. Here, Plaintiff’s counsel expended 47 hours, excluding
9 administrative time, multiplied by the blended hourly rate of \$600 per hour as detailed in the
10 accompanying declaration of Mr. Ferraro. This multiplier satisfies the optional lodestar cross check
11 and renders the one third fee requested pursuant to the terms of the Settlement squarely within the
12 presumptively acceptable range. *Laffitte v. Robert Half International Inc.* (2016) 1 Cal. 5th 480; *Dyer*
13 *v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (“the Ninth Circuit’s presumptively
14 acceptable range [is] 1.0-4.0”); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050-1052 (9th Cir. 2022)
15 (awarding 3.65 multiplier).

16 Furthermore, Plaintiff’s counsel is entitled to reimbursement of the out-of-pocket costs they
17 reasonably incurred investigating and prosecuting this case. *See In re Media Vision Tech. Sec. Litig.*,
18 913 F. Supp. 1362, 1366 (N.D. Cal. 1995) (citing *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-
19 92 (1970)). Counsel expended a total of \$11,777.97 in ordinary and reasonable litigation expenses.
20 *See* Ferraro Decl. ¶ 20. Counsel’s request for litigation costs should be granted in accordance with the
21 Settlement Agreement, which allows for reimbursement of *up to* \$15,000 in costs, which are
22 recoverable by statute under the Labor Code and Code of Civil Procedure, including Code of Civil
23

24 ¹ A court *may* conduct a lodestar “cross-check” to determine the reasonableness of the
25 attorneys’ fees requested by (1) by multiplying the number of hours reasonably expended litigating
26 the successful claims by a reasonable hourly rate; and (2) adjusting the lodestar “upward or downward
27 by an appropriate positive or negative multiplier reflecting a host of reasonableness factors,” including
28 “the quality of representation, the benefit obtained for the class, the complexity and novelty of the
issues presented, and the risk of nonpayment.” *In re Bluetooth Headset Products Liability*, 654 F.3d
935, 941-42 (9th Cir. 2011). When it is used, the cross-check “calculation need entail neither
mathematical precision nor bean-counting,” is not intended to be a “full-blown lodestar inquiry,” and
“can be performed with a less exhaustive cataloguing and review of counsel’s hours.” *Barbosa v.*
Cargill Meat Solutions Corp., 297 F.R.D. 431, 451 (E.D. Cal. July 2, 2013).

1 Procedure § 1021.5 and Labor Code § 2699(k)(1). The itemized statement of counsel's costs is set
2 forth in the declaration of Nicholas J. Ferraro. Ferraro Decl., ¶ 20.

3 **C. The Named Plaintiff's Individual Payment May Be Approved.**

4 Service awards are common in California class and representative actions, but there are no
5 published California opinions available to Plaintiff's knowledge discussing the standard governing
6 such payments in PAGA only actions like this one. Therefore, Plaintiff addresses the appropriateness
7 of the service award under the same heightened standard used for class action settlements, as follows:

8 A "representative is entitled to a fee in a California class action." *Cellphone Termination Fee*
9 *Cases*, 186 Cal. App. 4th 1380, 1394 (2010). Service awards "are fairly typical in class action[s]," "to
10 compensate class representatives for work done on behalf of the class, to make up for financial or
11 reputational risk undertaken in bringing the action." *Id.* To determine whether a service award is
12 reasonable, courts may consider: (1) the risk to the class representative in commencing suit, both
13 financial and otherwise; (2) the notoriety and personal difficulties encountered by the class
14 representative; (3) the amount of time and effort spent by the class representative; (4) the duration of
15 the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a
16 result of the litigation. *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).

17 The service award is justified considering the reputational risk Plaintiff assumed by litigating
18 these claims against a former employer. *See Wren v. RGIS Inventory Specialists*, 2011 WL 1230826,
19 at *36 (N.D. Cal. Apr. 1, 2011) (discussing risks for employees who file wage and hour class
20 actions); *Billinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 267-68 (N.D. Cal. 2015) (finding
21 "personal detriment" upon testimony that future employers can easily learn that a prospective
22 employee served as a plaintiff through the internet); *La Fleur v. Medical Management Intern, Inc.*,
23 2014 WL 2967475, *8 (C.D. Cal. June 25, 2014) (awarding \$15,000 to each named plaintiff in part
24 for attesting to their fear that the lawsuit will harm their future job prospects in the industry).

25 The risk of judgment for the employer's litigation costs, alone, is sufficient to support
26 Plaintiff's service award. *See Earley v. Superior Court*, 79 Cal. App. 4th 1420, 1433-34 (2000).

27 Further, the service award is appropriate because Plaintiff derives no monetary benefit from
28 this case beyond what she would ordinarily receive as an ordinary aggrieved employee. *In re Toys*

1 'R' Us-Delaware, Inc. *FACTA Litig.*, 295 F.R.D. 438 (C.D. Cal. Jan. 17, 2014); *Van Vranken*, 901 F.
2 Supp. 294, 299 (N.D. Cal. 1995. Here, in connection with her PAGA claims, Plaintiff will recover no
3 more than other employees covered by her lawsuit, despite undergoing personal sacrifice in bringing
4 this suit on their behalf. Plaintiff forwent the opportunity to file wage individual claims for her
5 individual benefit alone so that she could together vindicate the rights of others and recover
6 compensation for them on a representative-wide basis. Unlike other employees, Plaintiff faced the
7 financial risk of a judgment for costs in the event Defendant had prevailed in this litigation. Plaintiff
8 also delayed payment from what would be a relatively quick individual settlement in lieu of pursuing
9 this action instead.

10 Plaintiff very respectfully submits these reasons under the foregoing legal standard, as further
11 supported and discussed in the **Declaration of Plaintiff Ashley Nunez Estrada** submitted herewith,
12 in support of the request for the \$10,000 service award.

13 **III. STIPULATIONS**

14 The Parties, through their counsel of record, hereby stipulate that the PAGA settlement in this
15 case is fair and reasonable.

16 Therefore, the Parties respectfully request that this Court approve the Settlement and sign the
17 Proposed Order.

18 Respectfully submitted,

19 Dated: October 10, 2024

Ferraro Vega Employment Lawyers, Inc.

21 *s/ Nicholas J. Ferraro*

22 Nicholas J. Ferraro, Esq.

23 Lauren N. Vega, Esq.

Attorneys for Plaintiff Ashley Nunez Estrada

25 Dated: October 10, 2024

Higgs Fletcher & Mack LLP

27 *s/ Derek Paradis*

28 Ed Boniske, Esq.

Derek Paradis, Esq.

Attorneys for Defendant Baxter Hotel Group, Inc.

1 **~~PROPOSED~~ ORDER**

2 The Court has reviewed the Joint Stipulation Requesting PAGA Settlement Approval, the
3 Declaration of Nicholas J. Ferraro, and its exhibits, including the Private Attorneys General Act
4 Settlement Agreement and Release ("Settlement").

5 **NOW, THEREFORE, THE COURT HEREBY ORDERS AS FOLLOWS:**

6 The Parties' Joint Stipulation Requesting PAGA Settlement Approval is **GRANTED** and
7 approved pursuant to California Labor Code section 2699(s)(2). After the attorneys' fees, individual
8 representative service payment, costs, and administrator's expenses are deducted from the Gross
9 Settlement Amount, the Net Settlement Amount is \$80,610.03, of which 75% (\$60,457.52) shall be
10 distributed to the LWDA and the remaining 25% (\$20,152.51) shall be distributed to the aggrieved
11 employees as their share of PAGA penalties.

12 Accordingly, the \$160,000 gross settlement shall be distributed as follows:

- 13 1. \$60,457.52 to the Labor and Workforce Development Agency for PAGA penalties
- 14 2. \$20,152.51 to the PAGA Employees
- 15 3. \$10,000.00 to Plaintiff as an enhancement payment
- 16 4. \$53,328.00 to Plaintiff's counsel for attorneys' fees
- 17 5. \$11,777.97 to Plaintiff's counsel for costs
- 18 6. \$4,284.00 to the Settlement Administrator

19 Plaintiff, Defendant, and the Settlement Administrator are ordered to carry out the terms of the
20 settlement in accordance with the Settlement Agreement.

21 **JUDGMENT**

22 Judgment shall be entered through the filing of this order and judgment. Cal. Code Civ. Proc.
23 § 668.5. Plaintiff shall take from the Complaint only the relief set forth in the Settlement Agreement
24 and this Order and judgment. The Court retains jurisdiction over the parties to enforce the terms of
25 the Settlement Agreement and the final order and judgment.

26 **IT IS SO ORDERED**

27 10/16/24

28 

Hon. Katherine A. Bacal
Judge of the Superior Court