

Mark A. Ozzello (SBN 116595)
THE OZZELLO PRACTICE, PC
400 Continental Blvd. 6th Floor
El Segundo, CA 90245
Telephone: (844) 774-2020
Facsimile: (844) 774-2020
mark@ozzellolaw.com

David R. Greifinger, Esq. (SBN 105242)
tracklaw@me.com
Calvin A. Marshall, Esq. (SBN 318587)
calvin@greifingerlaw.com

LAW OFFICES OF DAVID R. GREIFINGER
15515 W. Sunset Boulevard, Unit 214
Pacific Palisades, California 90272
Telephone: (424) 330-0193
Facsimile: (831) 920-4864

Helen You, Esq. (SBN 329057)
helen@helenyoulegal.com
Law Office of Helen You
453 S. Spring Street, Suite 614
Los Angeles, California 90013
Telephone: (213) 260-0407

Attorneys for Plaintiff,
BRAULIO CUIEL

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

BRAULIO CUIEL, an individual, on behalf
of himself, on behalf of all persons similarly
situated, and on behalf of all aggrieved
employees

Plaintiff,

vs.

THE EDWARD THOMAS HOSPITALITY
CORP., a California corporation; and DOES 1
through 50 inclusive

Defendants.

Case No. 24STCV02181

Hon. Kenneth R. Freeman
Dept. SSC 14

CLASS ACTION

**PLAINTIFF BRAULIO CUIEL'S
REQUEST FOR DISMISSAL OF
ENTIRE CLASS ACTION (CAL. RULES
OF COURT, RULE 3.770)**

Filed concurrently with the Declaration of
Calvin A. Marshall and [Proposed] Order

Complaint filed: January 26, 2024
Trial Date: None Set

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF**
2 **RECORD:**

3 BRAULIO CUIEL (“Plaintiff”), by and through his counsel of record, hereby submits for
4 Court approval Plaintiff’s Request for Dismissal of Class Action under California Rules of Court,
5 rule 3.770¹ and Private Attorneys General Act (“PAGA”) (Lab. Code, § 2698 et seq.) Actions.
6 Plaintiff’s Request is with prejudice as to their individual claims and *without prejudice* as to the
7 putative class and the PAGA group. Plaintiff’s Request is supported by the Declaration of Calvin A.
8 Marshall, Plaintiffs’ attorney of record, being filed concurrently herewith in compliance with Rule
9 3.770(a).

10 **I. Brief Statement of the Case**

11 On January 26, 2024, Plaintiff filed his Class Action Complaint against Defendant THE
12 EDWARD THOMAS HOSPITALITY CORP. (“Defendant”).² Plaintiff’s Complaint (the
13 “Complaint”) contains the following Causes of Action:

- 14 (1) FAILURE TO PAY OVERTIME COMPENSATION AND LIQUIDATED DAMAGES
15 (Lab. Code, §§ 510, 1194, 1194.2, & 1198);
16 (2) FAILURE TO PAY MINIMUM WAGES AND LIQUIDATED DAMAGES (Lab.
17 Code, §§ 1182.12, 1194; 1194.2; 1197; 1197.1; & 1198 and Cal. Code Regs., tit 8, §
18 11050);
19 (3) FAILURE TO PAY REPORTING TIME WAGES AND LIQUIDATED DAMAGES
20 (CAL. LAB. CODE §§ 1197; 1197.1; and 1198 and Cal. Code Regs. § 11050(5)(A));
21 (4) FAILURE TO PROVIDE MEAL PERIODS (Lab. Code, § 226.7 & 512, and Cal. Code
22 Regs., tit. 8, § 11050);
23 (5) FAILURE TO PROVIDE REST PERIODS (Lab. Code, §§ 226.7 & 512, and Cal. Code
24 Regs. tit. 8, § 11050);
25 (6) FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS AND MAINTAIN
26 ACCURATE PAYROLL RECORDS (Lab. Code, §§ 226, subd. (a), 1174, subd. (d), &
27 1198);
28 (7) FAILURE TO REIMBURSE BUSINESS EXPENSES (Lab. Code, §§ 2800 & 2802);
29 (8) FAILURE TO PROVIDE ADEQUATE SEATING (Lab. Code, § 1198; Cal. Code
30 Regs., Tit. 8 § 11050(14));
31 (9) FAILURE TO PAY WAGES UPON TERMINATION OF EMPLOYMENT (Lab. Code,
32 § 203);
33 (10) VIOLATION OF LABOR CODE SECTION 558;
34 (11) UNFAIR COMPETITION (Bus. & Prof. Code, §§ 17200, et seq.); and,
35 (12) CIVIL PENALTIES FOR VIOLATIONS OF THE CALIFORNIA LABOR CODE,
36 PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT (CAL. LAB. CODE §§
37 2698, et seq.)³

38 The Complaint is a putative class action on behalf of Plaintiff and all other current and former

39

¹ All further references to rules are to the California Rules of Court.

² This Court’s Docket, January 26, 2024.

³ Id.

1 non-exempt employees, as well as misclassified employees or independent contractors, of
2 Defendant in California, at any time during the period commencing four years prior to the filing of
3 the Complaint [January 26, 2020] and continuing thereafter.⁴ Plaintiff's PAGA Notice Letter was
4 submitted to the Labor and Workforce Development Agency on October 24, 2023.⁵ The Complaint
5 alleges Defendant operates various restaurants and bars within the premises of the Casa Del Mar
6 and Shutters on the Beach Hotels in Santa Monica, California.⁶ The Complaint further alleges that,
7 with respect to Plaintiff and the Putative Class, Defendants: failed to pay minimum wages and
8 overtime wages for time spent donning and doffing uniforms and calculating tip outs; failed to pay
9 reporting time wages when Defendants abruptly took away scheduled shifts before their start times;
10 failed to provide compliant meal periods and rest periods; failed to reimburse business expenses
11 including personal cell phones used for scheduling matters; failed to properly receive and distribute
12 tips per a tip pooling policy; failure to provide adequate seating including stools at point of sale
13 systems; and failed to provide wages due upon termination of employment.⁷ The Complaint also
14 seeks civil penalties for the Labor Code violations alleged in the Complaint on behalf of Plaintiff
15 and other allegedly aggrieved employees under the Private Attorneys General Act ("PAGA"), Labor
16 Code section 2698, *et seq.*⁸

17 Defendant denies any alleged wrongdoing.⁹

18 **II. Other Similar Matters Bearing on the Viability of the *Curriel* Matter**

19 Plaintiff is a settlement class member in the matter entitled *Blanca Cornejo v. The Edward*
20 *Thomas Hospitality Corp.*, Los Angeles Superior Court Case No. 20STCV23586. Final Approval of
21 the *Cornejo* Class Action Settlement Agreement was granted on April 26, 2024.¹⁰ The Cornejo
22 settlement is for a class of all persons employed by Defendant from June 17, 2016, through
23 November 20, 2023.¹¹ The *Cornejo* settlement resolves claims for: (1) failure to pay minimum wages

24 ⁴ Id.

25 ⁵ Id.

26 ⁶ Id.

27 ⁷ Id.

28 ⁸ Id.

29 ⁹ Declaration of Calvin A. Marshall "Marshall Decl.", ¶ 3.

¹⁰ *Blanca Cornejo v. The Edward Thomas Hospitality Corp.*, Los Angeles Superior Court Case No. 20STCV23586
("Cornejo") Docket, April 26, 2024.

¹¹ *Cornejo* Docket, April 4, 2024.

1 and overtime; (2) failure to provide meal periods; (3) failure to provide rest periods; (4) failure to
2 provide accurate wage statements; (5) failure to pay wages due at separation of employment; (6)
3 violation of Bus. & Prof. Code section 17200; and (7) failure to timely pay wages during
4 employment.¹²

5 Additionally, a second matter is pending against defendant: *Jose Loera v. Neptunes Walk,*
6 *LLC, The Edward Thomas Hospitality Corp, et al.*, Los Angeles Superior Court Case No.
7 23SMCV00366.¹³ The *Loera* First Amended Complaint seeks, among other things, PAGA penalties
8 for the following alleged violations: (1) Failure To Provide Meal Periods; (2) Failure To Provide Rest
9 Periods; (3) Failure To Pay All Wages Due Upon Termination; (4) Failure To Pay All Wages Earned;
10 (5) Failure To Provide Overtime Wages; (6) Failure To Issue Accurate Itemized Wage Statements;
11 (7) Failure To Timely Produce Personnel File; (8) Unfair Competition; (9) Inadequate Seating; (10)
12 Unpaid Tip and Gratuities; (11) Unpaid Reporting Time Pay; and (12) Unreimbursed Business
13 Expenses.¹⁴ The PAGA Notice letter in the *Loera* matter was submitted to the Labor and Workforce
14 Development Agency on October 27, 2022 and amended on January 11, 2024.¹⁵

15 **III. The Other Matters' Effects on the *Curiel* Matter and Settlement**

16 Plaintiff's class action claims have been eviscerated by the *Cornejo* class settlement.¹⁶
17 Plaintiff's PAGA claims are in the process of being eviscerated by the *Loera* matter.¹⁷ Thus, Plaintiff's
18 counsel has determined that further prosecution of Plaintiff's class action claims and PAGA claims are
19 no longer viable.¹⁸ The parties have negotiated and agreed to a confidential settlement of Plaintiff's
20 alleged wrongful termination claims and have agreed to the dismissal of Plaintiffs' class claims and
21 PAGA claims *without prejudice* as to the putative class and the PAGA group, subject to court
22 approval.¹⁹

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24
25 ¹² Id.

26 ¹³ *Jose Loera v. Neptunes Walk, LLC, et al.*, Los Angeles Superior Court Case No. 23SMCV00366 ("Loera") Docket,
January 25, 2023.

27 ¹⁴ *Loera* Docket, June 28, 2024.

28 ¹⁵ LWDA PAGA Case Detail RE Case No. LWDA-CM0916163-22

29 ¹⁶ Marshall Decl. ¶ 4.

¹⁷ Marshall Decl. ¶ 5.

¹⁸ Marshall Decl. ¶¶ 4-6.

¹⁹ Marshall Decl. ¶ 6.

1 **IV. Request for Dismissal of Action**

2 Rule 3.770 empowers this court to dismiss class actions. Plaintiff makes the following
3 disclosures as required by Rule 3.770(a): No consideration, direct or indirect, has been or will be
4 given for the dismissal of the class claims.²⁰ Plaintiffs make the following disclosures as required by
5 California Rules of Court, rule 3.770(c): No class has been certified.²¹ No written notice of pendency
6 of the action has been provided to any putative class members in this action.²²

7 In light of the foregoing, Plaintiff respectfully requests that the Court enter an order
8 dismissing the above-entitled action in its entirety, with prejudice as to Plaintiff's individual claims,
9 and *without prejudice* as to the claims of putative class members and with respect to any aggrieved
10 employees excluding Plaintiff. Dismissal will not prejudice the other putative class members or any
11 other aggrieved employees for the following reasons: (1) no class has been certified and no notice of
12 pendency of the action has been provided to putative class members (Rule 3.770(c)); and, (2) the
13 putative class members may still pursue their claims.²³ Additionally, notice of this Request has been
14 forwarded to the Labor and Workforce Development Agency (LWDA).

15 Under Rule 3.770(b), the court may grant this request without a hearing.

16
17 Dated: July 30, 2024

THE OZZELLO PRACTICE, P.C.
LAW OFFICES OF DAVID R. GREIFINGER
LAW OFFICE OF HELEN YOU

18
19
20 By: 

MARK OZZELLO
DAVID R. GREIFINGER
CALVIN A. MARSHALL
HELEN YOU

*Attorneys for Objectors Braulio Curiel and
Luke Byson*

21
22
23
24
25
26
27 _____
28 ²⁰ Marshall Decl. ¶ 8.

29 ²¹ Marshall Decl. ¶ 9.

²² Marshall Decl. ¶ 9.

²³ *Id.*

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a
4 party to the within lawsuit; my business address is 400 Continental Blvd., 6th Floor, El Segundo, CA
5 90245.

6 On **July 30, 2024** I served the foregoing document described as **PLAINTIFF**
7 **BRAULIO CURIEL'S REQUEST FOR DISMISSAL OF ENTIRE CLASS ACTION (CAL.**
8 **RULES OF COURT, RULE 3.770)** on the interested parties in this action by placing **[X]** a true
9 copy thereof on:

10 David Fishman
11 Janet S. Soultanian
12 BALLARD ROSENBERG
13 15760 Ventura Blvd., 18th Floor
14 Encino, CA 91436
15 dfishman@brgslaw.com
16 jsoultanian@brgslaw.com
17 nfuller@brgslaw.com
18 laguilar@brgslaw.com
19 *Attorneys for Defendant*
20 *THE EDWARD THOMAS HOSPITALITY CORP.*

21 Labor and Workforce Development Agency
22 (By Posting on the LWDA PAGA Website)

23 **[X]** BY E-MAIL ONLY: I hereby certify that this document was served from Los Angeles
24 County, California, by e-mail delivery on the parties listed herein at their most recent
25 known e-mail address or e-mail of record in this action.

26 I declare under penalty of perjury under the laws of the State of California that the foregoing is
27 true and correct.

28 Executed on **July 30, 2024** at Los Angeles County, California.

Calvin Marshall
Type or Print Name

Signature