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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Ross Davies, on behalf of himself, all
others similarly situated, and the general
public,

Plaintiffs,

vs.

Silicon Shores Corporation, a California
corporation, and DOES 1 through 100,
inclusive,

Defendants.

Case No. 23CV428020

COMPLEX CASE; CLASS ACTION

**DECLARATION OF STEPHEN NOEL
ILG IN SUPPORT OF PLAINTIFF'S
STIPULATION TO APPROVE
SETTLEMENT AND DISMISS ALL
CLAIMS INCLUDING PAGA CLAIMS**

Date: n/a

Time: n/a

Dept.: 7

**DECLARATION OF STEPHEN NOEL ILG IN SUPPORT OF STIPULATION TO
APPROVE SETTLEMENT AND DISMISS ALL CLAIMS INCLUDING CLASS
ACTION AND PAGA CLAIMS**

I, Stephen Noel Ilg, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and before this Court. I am an attorney with ILG Legal Office, P.C., attorneys of record for Ross Davies on behalf of himself ("Plaintiff").

2. I have personal knowledge of the matters stated herein and, if called upon to testify as witnesses, could and would competently testify thereto.

3. I submit this declaration in support of the Stipulation to Dismiss All Claims, including Class and PAGA Claims. An unredacted copy will be lodged confidentially for the Court to review as needed. An unredacted copy is also being transmitted to the LWDA.

4. Factual Basis to Settle Individually After Investigation:

a. The Parties served discovery requests, exchanged responses, and engaged in settlement discussions. After an investigation revealed significant challenges in achieving certification—particularly a lack of commonality and numerosity, the parties entered into a Settlement Agreement to resolve all claims on an individual basis.

b. Discovery revealed that employees within the putative class had drastically different work circumstances. A few employees were full-time, but the vast majority of employees worked very limited hours and limited times during the year. These workers are almost all seasonal working, for instance, only during one or two summers. Many of the part-time employees worked short shifts of only five hours or less. The job duties of different employees were very different from each other. This creates serious challenges for establishing commonality needed to obtain class certification. It also suggest class action treatment is not superior to individual cases.

c. In addition, the job duties of various workers varies drastically. While some

perform typical business administrative duties, others are on a sailboat or other water activity during shifts. Still others are involved in providing food or catering to private parties while others teach arts and crafts.

d. Lastly, the entire group of individuals is very small and may not be sufficient for certification. There are an average of about twenty (20) part-time/seasonal employees at the Boathouse where Plaintiff worked.

e. Overall, experienced class counsel concluded after an investigation that class action treatment is not appropriate in this case. The most important reason is the lack of commonality among class members because of the different job duties and schedules. Accordingly, individual resolution appears most appropriate to resolve this dispute.

5. No Class Members will be prejudiced because the dismissal of class claims would be without prejudice. Thus, there will be no effect on Class Members. Notice should not be required because there is no reason to believe any putative Class Member was relying on the instant lawsuit. Plaintiff requests dismissal of the class claims against Defendant pursuant to California Rule of Court (CRC), 3.770 *et. seq.* Plaintiff specifically seeks an Order dismissing Plaintiff's class action allegations and claims without prejudice as to absent class members. No absent class member will incur any undue prejudice owing to the requested dismissals. Should any putative class members wish to pursue their claims against Defendant, they will remain free to do so subject to applicable statutes of limitation.

6. While Plaintiff originally anticipated that the case would proceed as a class action, discovery revealed there were not enough putative class members to satisfy "numerosity." As such, Plaintiff and Plaintiff's counsel do not believe there is any significant purpose served through further prosecution of the class action allegations.

7. The requested dismissal is not predicated on any undisclosed *quid pro quo*, and neither Plaintiff nor Plaintiff's counsel have received any remuneration for dismissing class claims. The requested dismissal of class allegations is furthermore *without prejudice* as to any absent class members and, thus, will not unduly compromise the absent class members' interests.

1 8. Pursuant to California Rule of Court 3.770, Plaintiffs respectfully request this Court to
2 permit Plaintiffs to dismiss the Ninth Claim for PAGA, without prejudice as to the Aggrieved
3 Employees and with prejudice as to Plaintiffs.¹

4 9. A copy of the Settlement Agreement has been submitted concurrently to the LWDA.

5 10. The Settlement does not affect any other individuals' right or the LWDA's right to bring
6 claims, including PAGA claims. Thus, the settlement at issue would bar the named Plaintiff from
7 pursuing a PAGA claim but not anyone else.

8 11. The proposed settlement herein did not allocate any money to PAGA penalties due to the
9 relatively low strength of the wage and hour and PAGA claims. No consideration, direct or
10 indirect, is being given for the dismissal of Plaintiffs' PAGA Claim. Cal. R. Court 3.770(a).
11 Plaintiffs have agreed to dismiss the PAGA Claim in exchange for a waiver of costs only. A court
12 does not abuse its discretion by approving a settlement that allocates zero dollars of the settlement
13 recovery to PAGA claims. *See Nordstrom Commission Cases*, 186 Cal.App.4th 576, 589 (2010).

14 12. In *Nordstrom Commission Cases*, 186 Cal.App.4th 576, 589 (2010), the court examined a
15 wage and hour case where the employer agreed to pay up to \$6.405 million in cash plus another
16 \$2.5 million in merchandise vouchers to settle all claims, including the PAGA claims. The trial
17 court approved the settlement that allocated zero dollars towards the PAGA claims. On appeal,
18 the appellate court held that the trial court did not abuse its discretion in approving the settlement
19 even though it released PAGA claims without any funds being paid to the LWDA for those claims.
20 The appellate court noted that the trial court acted properly in dismissing a PAGA claim without
21 any consideration paid to the LWDA for those releases. *Id.*

22 13. In *Villacres v. ABM Industries Inc.*, 117 Cal.Rptr.3d 398 (2010), the plaintiff brought a
23 complaint against the defendant for only PAGA penalties. Previously, the defendant had been
24 sued in a case that was settled for \$2.5 million and approved by the trial court. On appeal, the
25 court focused on potential *res judicata* issues involving the PAGA claims. However, in discussing
26 the case, the court stated that a trial court has the discretion to approve a PAGA settlement even

27 ¹ California Rule of Court 3.770 provides, in relevant part: "The court may grant the request
28 without a hearing." Cal. R. Court 3.770(b).

1 if the amount allocated to civil penalties is zero. It stated that it did not matter if “none of the
2 settlement proceeds . . . were allocated to PAGA” in the 2.5 million dollar settlement. *Id.* at 418.

3 14. In the instant matter, Plaintiffs wish to dismiss their PAGA Claim, without Prejudice as to
4 any other allegedly Aggrieved Employees. Thus, the dismissal of the PAGA Claim in this action
5 will have no *res judicata* or collateral estoppel effect on the LWDA or any potentially aggrieved
6 employee(s) other than Plaintiffs.

7 15. Additionally, this Court should grant Plaintiffs’ request to dismiss the PAGA Claim
8 against Defendant because it comports with the strong public interest favoring settlement.
9 “California law favors the settlement of disputes as our high court clarified in *Neary* []. Settlement
10 is efficient; it reduces costs, saves resources, and minimizes court congestion. [] The parties are
11 best positioned to understand their interests and resolve a dispute in a mutually beneficial manner
12 without court intervention into the settlement.” *Consumer Advocacy Group, Inc. v. Kintetsu*
13 *Enterprises of America*, 141 Cal. App. 4th 46, 62-63 (2006) (quoting *Neary v. Regents of*
14 *University of California*, 3 Cal.4th 273, 277-278 (1992)). “[T]here is an overriding public interest
15 in settling and quieting litigation.” *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir.
16 1976); *see also Ahern v. Central Pacific Freight Lines*, 846 F.2d 47, 48 (9th Cir. 1988). Courts
17 stated that “[d]ue regard should be given to what is otherwise a private consensual agreement
18 between the parties.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).

19 16. As counsel to the named individual Plaintiff, I have not portrayed to represent potential
20 unnamed representative members, other than acting as a proxy of LWDA, and no other potentially
21 aggrieved employees have advised me that they are relying on this lawsuit to protect their
22 interests.

23 17. The Settlement Agreement does not attempt to release the claims of any absent aggrieved
24 employees and thus does not recover any civil penalties for them.

25 18. The parties’ agreement to resolve Plaintiff’s class claims informally—that is, without
26 expending the resources for a Motion for Summary Adjudication—comports with the overarching
27 public policy in favor of settlement. Moreover, neither Plaintiff nor his counsel have received any
28 remuneration for dismissing the class allegations. Most significantly, Plaintiff seeks to dismiss

1 his class allegations *without prejudice*, so dismissal will not have a binding or dispositive impact
2 on the absent class members, who will remain free to pursue their claims against Defendant either
3 individually or by way of another class action.

4 19. No attempt has been made to certify a plaintiff class and no individuals are relying on this
5 lawsuit to redress their grievances. Although the case was filed as a putative “class action,”
6 Plaintiff has not filed any motion for class certification and no notice was transmitted to the class
7 thus far. No individuals are releasing any claims as a result of this motion. No class has been
8 certified. Plaintiff is not aware of any putative class member forgoing the filing of their own
9 claims in reliance on the pendency of this case.

10 20. Finally, experienced counsel, who is very familiar with the potential issues and pitfalls for
11 both parties in litigation of this nature, believes class members will not materially benefit from an
12 opportunity to comment on the instant Application, and a formal class notice would serve only to
13 increase litigation costs and delay resolution of Plaintiffs’ claims. Such expenses and further delay
14 countermands the public policy in favor of promptly and efficiently quieting litigation. Dismissing
15 the class action claims now will save the unnecessary expenditure of resources—for both Parties
16 and for the Court of a Motion by Defendant.

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18 Dated: January 22, 2025

ILG Legal Office, P.C.

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21 Stephen Noel Ilg, Esq.
22 Attorneys for Plaintiff Ross Davies
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