

Melinda Arbuckle (SBN 302723)
marbuckle@wageandhourfirm.com

Wage and Hour Firm
3600 Lime Street, Suite 111
Riverside, CA 92501
Telephone: (214) 489-7653
Facsimile (469) 319-0317

Counsel for Plaintiff Holly Garrett

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

HOLLY GARRETT, as an aggrieved employee
pursuant to the Private Attorneys General Act
("PAGA"), on behalf of the State of California
and other aggrieved employees,

Plaintiff,

vs.

SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC.

Defendant.

Case No. CVRI2103869

**DECLARATION OF MELINDA
ARBUCKLE IN SUPPORT OF PLAINTIFF
HOLLY GARRETT'S MOTION TO
APPROVE PAGA SETTLEMENT**

My name is Melinda Arbuckle. I submit this declaration in support of the Motion to Approve PAGA Settlement. I am over the age of 21 and counsel of record for Plaintiff in the above-captioned case. I am in all ways competent to make the below declaration. The sworn statements below are true and correct of my own personal knowledge.

1. I am a founding partner of Wage and Hour Firm. I have been a licensed attorney in the state of California for nine years. During my career, I have specialized in labor and employment law, especially in wage and hour laws like the federal Fair Labor Standards Act, the California Private Attorneys General Act and the California Labor Code.
2. I am a member in good standing and admitted to practice before all state and federal district courts in the states of California and Texas, as well as in the federal district courts of Colorado, New Mexico, North Dakota, Western District of Arkansas, Western District of Oklahoma, Northern District of Ohio, Western District of Michigan, Eastern District

1 of Oklahoma, Northern District of Oklahoma, Eastern District of Missouri, and Southern
2 District of Indiana.

3 3. I earned my Juris Doctor from Southern Methodist University – Dedman School of Law.

4 After graduation, I worked for Baron & Budd, P.C. as an associate, then completed a
5 clerkship with Honorable W. Royal Furgeson, who was then sitting by designation in the
6 Northern District of Texas. Afterward, I pursued my own practice litigating debt
7 collection and family law cases in state courts in Texas. In March of 2015, I returned to
8 work with Allen Vaught in Baron & Budd’s Labor and Employment Department. Mr.
9 Vaught had developed a significant nationwide presence in labor and employment
10 litigation. Thereafter, in September of 2019, I joined Shellist Lazarz Slobin where I
11 became a partner. In November of 2022, my partner, Ricardo J. Prieto, and I started our
12 own law firm, Wage and Hour Firm.

13 4. My co-counsel and I have significant experience litigating wage and hour claims
14 including claims for PAGA penalties, and the PAGA settlement here is similar to or
15 greater than similar settlements that courts have approved. My resume and the resume of
16 my co-counsel, Ricardo J. Prieto, are attached hereto as **Exhibit 2**.

17 5. I have personal knowledge of the relevant features of the proposed PAGA settlement,
18 including the efforts that went into settlement and the beneficial outcome to the State of
19 California and the aggrieved employees. The proposed PAGA settlement is attached to
20 this declaration as **Exhibit 1**.

21 6. The proposed PAGA settlement resolves claims against Defendant Sedgwick Claims
22 Management Services, Inc. (“Defendant” or “Sedgwick”) including that Sedgwick
23 allegedly required Plaintiff and aggrieved employees to work many hours per week off-
24 the-clock without any compensation (Cal. Labor Code §§ 510, 1194, 1771, 1774), that
25 Sedgwick failed to provide compliant meal and rest periods or applicable penalty
26 payments (§§ 226.7 & 512 and California Wage Order 4-2001, §§ 11(A), 12(A)), and
27 that, as the result of its alleged misconduct, Sedgwick failed to provide accurate, itemized

1 wage statements and failed to pay all wages due upon discharge and within the time
2 required by law after their employment ended (Cal. Labor Code §§ 201-203226, 1174,
3 1174.5).

- 4 7. On June 9, 2021, Plaintiff provided a written notice by online filing to the LWDA and by
5 certified mail to Defendant of the specific provisions of the California Labor Code
6 alleged to be violated, including facts and theories to support the alleged violations, in
7 accordance with California Labor Code Section 2699.3. (See **Exhibit 4**.) That same day,
8 the LWDA PAGA Administrator confirmed receipt of the written notice and assigned
9 PAGA Case Number LWDA-CM-834484-21. (See *id.*) The 65-day notice period for the
10 LWDA to investigate expired and the LWDA did not notify Plaintiff's counsel of an
11 intent to investigate the claims at issue in this action.

12 **RELEVANT FACTUAL BACKGROUND**

- 13 8. This case was originally filed as a class/collective action under the FLSA in federal court.
14 (See **Exhibit 7**.) Given that Defendant shared a potentially binding arbitration agreement
15 with a class action waiver, Plaintiff dismissed the federal case and filed the instant action.
16 (See **Exhibit 8**.) Accordingly, Plaintiff seeks certain costs associated with the filing of the
17 federal case.

18 **NEGOTIATING THE SETTLEMENT**

- 19 9. The Parties agreed to mediate with Honorable Jan M. Adler (Ret.), an experienced
20 mediator and former California magistrate judge knowledgeable regarding PAGA and the
21 wage and hour claims at issue in this action, on December 5, 2023. Prior to the mediation,
22 Plaintiff conducted significant investigation and discovery of the facts and law.
23 Defendant produced numerous documents relating to its policies, practices, and
24 procedures regarding paying non-exempt employees working in California for all hours
25 worked, overtime, meal and rest period policies, payroll and operations policies, and
26 more. Defendant also produced the time and pay records for 50% of the Aggrieved
27 Employees, and sufficient records and data for Plaintiff to determine the number of
28

1 Aggrieved Employees and the number of pay periods in the PAGA Period and to evaluate
2 the merits of their claims. The Parties agreed that the above-described investigation and
3 evaluation, as well as the information exchanged during the settlement negotiations,
4 would be more than sufficient to assess the merits of their respective positions and to
5 compromise the issues on a fair and equitable basis.

6 10. On December 5, 2023, through arm's length negotiations with the assistance of the
7 mediator, the Parties reached an agreement to settle the PAGA claims in this action
8 leading to the signing of a settlement agreement. The settlement was negotiated in light
9 of all known facts and circumstances and the uncertainty associated with litigation –
10 including the risk of Plaintiff not being able to prevail on her legal theories, the difficulty
11 of proving violations as to all or most employees at issue in an efficient trial, the merits of
12 Defendant's potential defenses, and the significant delay and potential appellate issues
13 inherent to litigation – and was reached after extensive arm's-length negotiations, with
14 the assistance of Judge Adler (Ret.).

15 TERMS OF THE SETTLEMENT

16 11. The relevant monetary terms of the proposed PAGA settlement are as follows: the
17 settlement provides a Gross Settlement Amount of \$250,000. The proposed PAGA
18 settlement provides for attorney's fees in the amount of \$62,500.00, reimbursement of
19 reasonable litigation expenses in an amount not to exceed \$10,000, and reimbursement of
20 settlement administration costs not to exceed \$2,500. (*See Ex. 1*, § 3, pp. 4-5.) After these
21 deductions, the amount remaining comprises the Net Settlement Amount, estimated to be
22 no less than \$175,000. 75% of that amount will be paid to the LWDA, and the remaining
23 25% will be distributed to the Aggrieved Employees.

24 12. The PAGA releases which will be obtained from Aggrieved Employees were modeled on
25 the Los Angeles County Superior Court's model PAGA settlement agreement (*See*
26 **Exhibit 3.**)

1 13. In connection with this Court's Order of April 22, 2022, the proposed PAGA settlement
2 contemplates the use of an administrator. My colleague, Ricardo J. Prieto, solicited bids
3 from multiple claims administrators and selected the lowest bidder, which was Phoenix
4 Settlement Administrators.

5 14. I submitted a copy of the motion for approval of the proposed PAGA settlement along
6 with a copy of the proposed PAGA settlement agreement with the LWDA on June 14,
7 2024. In addition, I will submit to the LWDA a copy of the Court's judgment and order
8 approving the proposed PAGA settlement within ten (10) days after entry of judgment or
9 order.

10 15. A PAGA Counsel Fees Payment equal to 25% of the Gross Settlement Amount (\$62,500)
11 and a PAGA Counsel Litigation Expenses Payment in an amount not to exceed \$10,000,
12 subject to this Court's approval, will be paid to PAGA Counsel as part of the settlement
13 in accordance with California Labor Code § 2699(g)(1), as set forth in the Agreement.

14 16. Payment to the Administrator in an amount not to exceed \$2,500 to perform the
15 administrative duties to distribute the settlement money shall also be paid from the Gross
16 Settlement Amount.

17 *The responses to the questions posed by the Court in its Case Management Order follow:*

18
19 **D.1.a.: If the settlement is memorialized in a written agreement, the declaration**
20 **shall authenticate a fully executed copy of that agreement. If there is no**
written agreement, the declaration shall describe in detail all the terms of the
agreement.

21 17. Attached hereto as **Exhibit 1** is a true and correct, fully executed copy of the proposed
22 PAGA settlement. Pursuant to C.E.C. § 1414(a), both parties admit to the authenticity of
23 the proposed PAGA settlement.

24 **D.1.b.: The declaration shall state whether the parties utilized the services of any**
25 **neutral party to mediate this dispute.**

1 18. The parties retained the services of Hon. Jan M. Adler (Ret.), an experienced mediator
2 and former California magistrate judge knowledgeable regarding PAGA and the wage
3 and hour claims at issue in this action, and attended mediation on December 5, 2023.

4 **D.1.c.: The declaration shall provide proof that the settlement agreement was**
5 **submitted to the Labor and Workforce Development Agency. (Lab. Code,**
§ 2699, subd. (l)(2)).

6 19. On June 14, 2024, I submitted the proposed PAGA settlement to the LWDA. Pursuant to
7 C.E.C. § 1280, attached as Exhibit 7 is a screenshot of the LWDA's website showing the
8 submission was made.

9 **D.2.: If the settlement provides for the payment of any PAGA penalties, the**
10 **declaration shall estimate the maximum penalties for which the defendant**
could be liable by explaining:

11 **a.: The nature of the alleged violations;**

12 20. Plaintiff raised two main factual issues in this case. The first was whether Defendant
13 required Plaintiff and other TCMs to work more hours than they were compensated for
14 because of discrepancies between the time reflected on their paystubs versus the time that
15 they billed to customers. (Ex. 5, Pl's First Am. Compl., ¶¶ 12-32.) Plaintiff also alleged
16 that Plaintiff and other TCMs were not afforded meal and rest periods that complied with
17 the California Labor Code and the relevant IWC Wage Order. (Ex. 5, Pl's First Am.
18 Compl., ¶¶ 33-37.) Consequently, Plaintiff pleaded that Defendant violated:

- 19 - California Labor Code §§ 510, 1194 (requiring overtime compensation at a rate of
20 one and one-half times the regular rate of pay for work in excess of eight hours in one
21 workday, in excess of 40 hours in one workweek, and the first eight hours worked on
22 the seventh day of work; and at a rate of twice the regular rate of pay for work in
23 excess of eight hours on the seventh day of a workweek) (Ex. 5, Pl's First Am.
24 Compl., ¶ 48.)
25 - California Labor Code §§ 226.7, 512 (requiring employers to provide compliant meal
26 and rest periods or pay statutory penalties of one additional hour of pay weekly if
27 meal or rest periods are not provided). (Ex. 5, Pl's First Am. Compl., ¶ 49.)

- California Labor Code §§ 226, 1174, 1174.5 (requiring accurate itemized earning statements) (**Ex. 5**, Pl’s First Am. Compl., ¶ 50.)
- California Labor Code §§ 201-203 (establishing “waiting time” penalties for employers who do not pay all unpaid, earned wages immediately at the time of discharge). (**Ex. 5**, Pl’s First Am. Compl., ¶ 50.)

b.: The number of alleged individual violations, including both the length of the relevant employment period and the number of employees allegedly employed during that period;

21. Defendant provided the length of employment of the allegedly Aggrieved Employees for the period between June 9, 2020, through July 19, 2023. (See **Ex. 6**, PAGA Calculations.) Those employment dates reflect 2,498 weeks of work. (See *ibid.*) Given that the allegedly Aggrieved Employees were paid bi-weekly, this leads to 1,249 individual violations with respect to the majority of the PAGA allegations. (See *ibid.*) In that period, thirty-seven (37) employees were allegedly employed as TCMs. (See *ibid.*)

c.: The total amount of penalties for which the defendant is potentially liable if all allegations are proven;

22. Plaintiff calculated the total penalties under two models, a typical model and under the standard set forth in *Bernstein v. Virgin Am., Inc.* (9th Cir. 2021) 3 F.4th 1127. In that case, the Ninth Circuit determined that subsequent violation penalties do not accrue until an employer is notified of its violations, at minimum by the notice provided by a representative employee in a PAGA action. *Id.* at 1144. Under the standard model, Defendant could be liable for approximately \$1,159,200.00 in penalties, but under *Bernstein* the number is reduced to \$650,592.86. (See **Ex. 6**, PAGA Calculations.)

d.: The total amount of penalties defendant is likely to be found liable at trial considering the weight of the evidence, the clarity of the applicable law, and the strength of any factual or legal defense likely to be asserted by the defendant;

23. Plaintiff believes that her strongest claims relate to the overtime claims and the consequent issues with wage statements as to her and other Aggrieved Employees. Given Plaintiff’s contention regarding the documented disparity between billing records and

1 wage statements, the likelihood of imposition of damages as to those categories of
2 alleged violation are the highest. Under *Bernstein*, the total penalties attributable to such
3 damages are \$189,735.71. This settlement represents 79% of that total number.

4 **e.: The likelihood that any violations would be proven to have been**
5 **knowing and intentional;**

6 24. Plaintiff has adduced and Defendant has disclosed no evidence that would tend to
7 indicate that Defendant's alleged violations of the law were knowing and intentional.
8 Indeed, Defendant was a successor in interest to York, and therefore subsumed liability
9 from its acquisition of that entity. Furthermore, Sedgwick contends that it has compliant
10 policies and practices and it was not aware that TCMs (working remotely) may have been
11 working off-the-clock or not taking their meal and rest periods. Accordingly, Defendant
12 would likely be able to avoid any determination as to intent to violate the law.

13 **f.: Any facts that tend to suggest that the imposition of the total amount**
14 **of statutory penalties for which the defendant would be likely to be**
15 **found liable at trial would be unjust, arbitrary and oppressive, or**
16 **confiscatory;**

17 25. Good faith attempts to comply with the law have been determined to be adequate to
18 reduce penalties under PAGA. *See Carrington v. Starbucks Corp.* (2018) 30 Cal. App.
19 5th 504, 529. Defendant claims that, relative to the meal and rest period claims, it
20 encouraged its employees to take compliant meal and rest periods and any failure to do so
21 was the fault of the employee because such employees worked from home. Accordingly,
22 the Court may find that liability should be reduced given Defendant's alleged attempts to
23 comply with the law and any employee's alleged failure to heed Defendant's guidance.

24 **g.: How the amount of the agreed-upon penalties was calculated or**
25 **otherwise arrived at; and**

26 26. The agreed-upon penalties in this case represent approximately 23% of the *Bernstein*
27 damages that Defendant could expect to pay in the event of Plaintiff's complete success.
28 By another measure, it provides complete recovery for penalties attributable to the failure
to pay due and owing overtime wages, and approximately 40% of the wage statement

penalties attributable to same. Given the strength of these claims and the likelihood of Defendant's success with respect to its defenses under Labor Code § 2699(e)(2), Plaintiff and her counsel believe this to be an excellent result.

h.: Any other factors that are material to a determination that the amount of the agreed-upon penalties is fair.

27. All relevant factors are addressed above.

D.3.: If the settlement provides for the payment of attorney's fees or costs to plaintiff's counsel, the motion shall be supported by a declaration of plaintiff's counsel that provides evidence of the total time spent by counsel, a description of the work performed, the reasonableness of the fees charged and a detailed description of the costs actually incurred. Additionally, if relevant, the request for fees shall also advise the Court whether there is an agreement about how attorneys fees will be paid, including fee splitting, and whether the client(s) has been given written notice.

28. A summary of Plaintiff's counsel's lodestar is below:

Date	Description	Hours	Rate	Fee
6/3/2021	Initial Client Intake (3 lawyers)	3	700	2100
6/8/2021	Draft Initial Complaint	5	700	3500
6/9/2021	Review Paralegal Draft Pleadings	2	700	1400
6/9/2021	Work on PAGA Notice docs, supervise LWDA filing	2	700	1400
6/10/2021	Review Standing Order	0.5	700	350
6/21/2021	Amend Paralegal Draft PHV	1	700	700
6/23/2021	Supervise Service of process	0.5	700	350
8/9/2021	Confer re and Draft Stipulation to Ext Answer	1.5	700	1050
8/10/2021	Review Arbitration Agreement	1	700	700
8/24/2021	Draft Notice of Voluntary Dismissal	1	700	700
8/25/2021	Work on Complaint in CA, supervise filing	3	700	2100
8/27/2021	Supervise LWDA complaint filing	0.5	700	350
9/28/2021	Work on Amending Complaint	0.4	700	280
11/29/2021	Review Defendant's Pleadings	0.5	700	350
4/14/2022	Work on CMC Statement	2	700	1400
8/8/2022	Legal Research re Viking River Cruises	4	700	2800
8/8/2022	Work on Stipulation re Stay	0.5	700	350
10/10/2023	Factual Investigation with Client and Opp Counsel	4	700	2800
11/28/2023	Work on Damage Model (research and calculation)	3	700	2100
11/28/2023	Prepare Corr to Mediator	0.4	700	280
12/5/2023	Prep and attend mediation (3 lawyers)	24	700	16800
1/20/2023	Work on Settlement Documents	4	700	2800
1/20/2023	Correspondence with TPA	0.7	700	490

3/19/2024	Initial Draft Approval Documents	6	700	4200
4/9/2024	Review Defendant's Edits to Approval documents	0.5	700	350
5/20/2024	Additional Work on Approval Documents	8	700	5600
	Various Emails, Internal and with Opposing Counsel	47.2	700	33040
				88340

As shown above, most of the time spent in this case was on investigation, legal research, drafting complaints, preparing and attending mediation, and finalizing the settlement. Plaintiff's counsel also spent significant time corresponding regarding the case, with over 250 emails about the case being exchanged. Plaintiffs' counsel has written off approximately 30 hours of work in an exercise of billing judgment and has not submitted any hours for the work of legal assistants. Furthermore, counsel have been approved at a rate of \$725.00 per hour two years ago, so the billing rate of \$700.00 per hour represents a discounted rate. *Reginald Moore, et al. v. Universal Protection Service, LP d/b/a Allied Universal Security Services*, Case No. EDCV 19-2121 JGB (SPx) (ECF No. 263) (C.D. Cal., July 2, 2022) (Bernal, J.). (See **Exhibit 9**.) The summary of the lodestar incurred by counsel in this case more than supports the requested 25% of the Gross Settlement Amount (\$62,500), which is common in cases such as this.

29. A detailed summary of the costs incurred in the case follows:

Date	Cost	Description	Vendor
6/9/2021	\$402.00	Filing Fee (Federal)	Pay.gov
6/9/2021	\$75.00	LWDA Filing Fee	Dir.ca.gov
6/16/2021	\$1,500.00	Pro Hac Vice Fees: Green, Daly, Prieto (Federal)	Pay.gov
6/21/2021	\$50.00	Order Certificates of Good Standing for PHV	SBOT
6/22/2021	\$160.00	Service of Process (Federal)	Court Record Research, Inc.
		Filing Fee Civil Cover Sheet, Complaint (Superior)	
8/24/2021	\$27.00	(Rejected)	First Legal
8/25/2021	\$564.95	File Civil Complaint in Riverside (Superior)	First Legal
8/31/2021	\$69.95	Filing fee for Request for Summons (Superior)	First Legal
			Court Record Research, Inc.
9/10/2021	\$175.00	Service of Process (Superior)	
9/15/2021	\$29.95	Filing fee for Affidavit of Service (Superior)	First Legal
9/28/2021	\$29.95	Filing fee for Amended Complaint (Superior)	First Legal
10/27/2021	\$29.95	Filing fee for POS re First Am Complaint (Superior)	First Legal
1/25/2022	\$49.00	Filing fee for Stipulation to Stay (Superior)	First Legal
			Superior Ct
3/10/2022	\$1000.00	Complex Case Fees	(Riverside)
4/14/2022	\$14.00	Download Pleadings	SMT Court Epay

8/8/2022	\$92.80	Filing fee for Second Stipulation to Stay (Superior)	First Legal
8/10/2022	\$30.80	Filing fee for Joint CMC Report (Superior)	First Legal
8/18/2022	\$16.00	Download Pleadings	SMT Court Epay
11/8/2023	\$5,375.00	Mediation Fee	Judicate West

The fee splits in this case have been disclosed to the client from the date she signed a fee agreement with counsel and are as follows: Shellist Lazarz Slobin, LLP 14.25%; Daly & Black, P.C. 50% and Wage and Hour Firm 35.75%.

D.4.: If any plaintiff negotiates a settlement of individual claims against any defendant separate from the settlement or dismissal of the representative claims, or if the settlement provides for the payment to any plaintiff of consideration in addition to or instead of PAGA penalties, the declaration shall explain:

- a. The nature of any unpled individual claims being released by the plaintiff;
- b. The value of each individual claim being released by the plaintiff. In particular, the declaration shall estimate (i) the total amount of damages, lost wages, penalties, attorney's fees and costs, interest, or other relief that the plaintiff would be awarded if the action were entirely successful at trial on that claim, and (ii) the total amount of damages, lost wages, penalties, attorney's fees and costs, interest, or other relief that the plaintiff could reasonably expect to be awarded at trial, taking into account the likelihood of prevailing and other attendant risks;
- c. The form and value of the consideration to be paid to the plaintiff; and
- d. If the consideration to the plaintiff is in the form of one or more monetary payments, the total amount of that monetary consideration, how the monetary consideration was calculated, and to whom it is to be paid.

30. The individual settlement and general release of any and all of Plaintiff's potential individual claims against Defendant arising from her employment, separate from the settlement or dismissal of the representative PAGA claims, will be brought to the hearing on this Motion and will be provided for *in camera* review. Counsel will be prepared to discuss in further detail *in camera* with the Court. *See Valadez v. CSX Intermodal Terminals, Inc.* (N.D. Cal. May 13, 2020) No. 15-CV-05433-AGT, 2020 WL 13179429, at *3, (supporting that the individual settlement amount and terms should remain confidential, explaining that non-PAGA, individual settlements do not require court approval and parties have a legitimate interest in keeping the terms of their individual settlement private).

1 **D.8.a.: If the settlement contemplates the use of an administrator to implement the**
2 **terms of the settlement, the motion shall be supported by a declaration from the plaintiff's**
3 **attorney, stating whether bids were sought from multiple potential administrators and, if**
4 **so, the results of that competitive bidding. If the parties did not select the lowest bidder,**
5 **the declaration shall explain that decision.**

6 31. In connection with this Court's Order of April 22, 2022, the proposed PAGA
7 settlement contemplates the use of an administrator. My colleague Ricardo J. Prieto solicited
8 bids from multiple claims administrators and selected the lowest bidder, which was Phoenix
9 Settlement Administrators.

10 I certify (or declare) under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct.

12 Dated: June 14, 2024

s/Melinda Arbuckle
Melinda Arbuckle

13 ATTORNEY FOR PLAINTIFF HOLLY
14 GARRETT