

September 6, 2024

Labor and Workforce Development Agency
Department of Industrial Relations
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

VIA WEB PORTAL

Re: *Quintero v. Apria* (LWDA Case No. LWDA-CM-811042-20);
Tisdale, Pratt v. Apria (LWDA Case No. LWDA-CM-1037853-24);
Smith v. Apria (LWDA Case No. LWDA-CM-867711-22)

To the LWDA and its Legal Counsel:

This firm represents the Plaintiffs in a certified class action, Quintero v. Apria (LWDA Case No. LWDA-CM-811042-20) ["Quintero"], and also the Plaintiffs and putative class in Tisdale, Pratt v. Apria (LWDA Case No. LWDA-CM-1037853-24) ["Tisdale"], both of which are pending in the LA Superior Court before Hon. Carolyn Kuhl.

We are writing to notify and alert you to the potential for a "reverse auction" scenario which results in the LWDA and aggrieved employees receiving, in our opinion, far less than what is appropriate or possible.

Specifically, we are set for trial Nov. 4th in the Quintero class and PAGA action against Apria. As you may know from our October 2020 PAGA Notice Letter, our cases involve "couriers" that Apria uses but who are treated as independent contractors. There are a whole host of *Labor Code* violations that stem from this mistreatment, including unpaid wages, overtime, expenses and so forth. We filed the "follow-on" of Tisdale, because Apria has not changed their ways (i.e. they are still misclassifying and using couriers) and so we need to capture any individuals that continue to work in this role past judgment in the Quintero matter and past the period for which we have data.

As Quintero class counsel, we have won: class certification; summary adjudication of the workers' employment status; and judgment on the pleadings eliminating nearly every viable defense. The Nov. 4, 2024 trial is expected to essentially focus on competing damages arguments and PAGA penalty calculations, via expert.

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Very recently, we have become aware of a scheme involving Apria counsel (bearing the hallmarks of concealment and collusion) and the last-minute revealing of other Apria wage/hour litigation to the Quintero court. In fact, the Quintero court has set an OSC hearing re: sanctions against Apria's counsel in this regard. This seems to be an effort to delay the trial in Quintero, which we will resist at every turn.

Of particular concern, and the purpose of this letter as it relates to the Smith v. Apria case (LWDA Case No. LWDA-CM-867711-22), is as follows. We, as class counsel, believe that we have essentially caught defense counsel trying to ram through a "reverse auction" strategy with the help of the Hawkins firm attorneys in the Smith case, including said counsel attempting to sign-up one of our certified class members to be a new plaintiff in a yet-to-be-filed amended complaint designed to broaden the settlement group after reaching some sort of MOU on a narrower group. We also believe that Apria may be attempting to rush through a settlement on an expedited basis with the Smith counsel, because of the impending Quintero trial (as well as the fact that Tisdale has been deemed a related case and is now before the very same judge).

Given the recent Turrieta v. Lyft holding, we understand that there are limitations on the nature of objections to severely undervalued, "sweetheart" PAGA settlements. Accordingly, we would invite the LWDA to ask us any questions about the potential PAGA exposure in both our matters (Quintero and Tisdale) and in the Smith matter, so that the LWDA can make an informed choice whether to object, or otherwise weigh-in concerning these matters. We want to avoid a situation where the employees and the LWDA receive severely discounted civil penalties in a hasty settlement, when we are about to go to trial and seek the maximum available amounts.

We are happy to provide any information requested concerning the Quintero and Tisdale matters for which we are counsel. For example, if you would like to review the class certification order, summary judgment ruling, or judgment on the pleadings rulings, we can provide those to aid in your assessment of the relative strength of the actions.

In addition, should a joint conference of counsel be appropriate, we are willing to participate in that as well.

The contact info of counsel is as follows:

For the *Quintero*, *Tisdale* cases

Brian Hefelfinger (bdh@calemploymentcounsel.com)

Dan Palay (djp@calemploymentcounsel.com)

Alex Gutierrez (alex@apgutierrezlaw.com)

For the *Smith* case

Isandra Fernandez (isandra@jameshawkinsaplc.com)

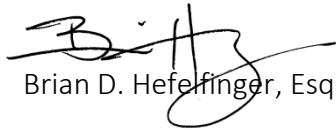
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We look forward to working with you on behalf of the aggrieved employees that we represent, as well as on behalf of the State and the LWDA, consistent with our aims of maximizing the recoveries.

Very truly yours,

PALAY HEFELFINGER, APC



Brian D. Hefelfinger, Esq.

BDH