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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE –CIVIL COMPLEX CENTER

MARIA VELEZ, as an individual and on
behalf of other similarly situated employees,

Plaintiff,

vs.

LEGACY FARMS, LLC., a California
corporation, LEGACY FARMS OF
CALIFORNIA, LLC, a California corporation,
LEGACY FARMS EMPLOYMENT
SERVICES COMPANY, INC., a California
corporation, and PRIORITY WORKFORCE,
INC, a California corporation and DOES 1-50,
inclusive,

Defendants.

Case No.: 30-2019-01120177-CU-OE-CXC

Assigned for all Purposes to Honorable: Judge
William Cluster
Dept. CX 104

**SUPPLEMENTAL MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR ORDER
APPROVING SETTLEMENT UNDER
CALIFORNIA LABOR CODE SECTION
2699 ET SEQ.**

Hearing Date: April 1, 2022

Hearing Time: 9:00 a.m.

Department: CX104

Case filed: December 23, 2019
Trial date: TBD

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2 **I. SUPPLEMENTAL BRIEF STATEMENT OF FACTS AND PROCEDURAL**
3 **HISTORY**

4 **a. SUPPLEMENTAL EVALUATION**

5 In March 2022, Priority Workforce, Inc. advised the parties that the number of aggrieved
6 employees increased from 185 aggrieved employees to 238 aggrieved employees. As a result of
7 this new information, the parties negotiated new settlement figures and have increased the
8 settlement amount from \$250,000 to \$262,000. The amended settlement agreement has been
9 revised to reflect this modification and reflected in the redline exhibit. Accordingly, the request
10 has been updated to account for this issue. The size of the aggrieved employees increased by
11 28.6%. The amount of the settlement increased by 5%. The negotiated increase was based upon
12 the application of a discount while taking into consideration the potential impact of *Viking River*
13 *Cruises, Inc. v. Angie Moriana* (Docket No. 20-1573) on PAGA claims that are subject to
14 arbitration agreements with representative action waivers such as this one. Despite the increase
15 in the size of the aggrieved employees, the settlement amount remains fair, reasonable and
16 adequate in view of PAGA's purpose. (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56)
17 The gross amount of exposure based upon each aggrieved employee is \$1,100.84 (\$262,000
18 settlement amount/238 aggrieved employees). Below is a revised evaluation.

19 1. Labor Code Violations

20 In response to the Court's tentative, below is a further evaluation of the Plaintiff's claims
21 and updated allocation.

22 2. Meal Break Violations

23 The payroll records determined an approximate evaluation of \$152,000 based upon a
24 presumption that the time keeping data indicated a short, late or missed meal break.
25 (Supplemental Declaration of Armond M. Jackson "Supp Jackson Decl." ¶ 6. a.) Defendant
26 disputed this theory claiming that the aggrieved employees had an opportunity to take all full and
27 complete meal breaks. (*Id.*) The alternative theory related to handwashing procedures causing
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late and short meal breaks was also disputed. (*Id.*) If Plaintiff prevailed at trial, the expected value without discount would be approximately \$200,000. (*Id.*) However, Defendant claimed that handwashing was done on the clock and there was no pressure for the aggrieved employees to perform handwashing activities off-the-clock or pressured to return early from a meal break or leave late for a meal break due to handwashing procedures. (*Id.*) Given the dispute about whether or not the aggrieved employees had an opportunity to take a meal break remains in dispute that impacts the likelihood of success of the claim providing for a justification of a 50% discount of this claim to \$88,000 ($\$152,000 + \$200,000/2 \times .5$). (*Id.*) Given the increased amount of aggrieved employees, this amount was increased by 28.6% from the discounted amount resulting in a modified exposure amount of \$113,168 ($\$88,000 + \$88,000 \times .286$). (*Id.*)

3. Rest Break Violations

There were no records evincing rest break violations. Assuming the same violation rate for meal breaks applied to rest breaks, the exposure amount would also be \$152,000. (Supp Jackson Decl. ¶ 6. b.) The alternative theory related to handwashing activities causing short rest breaks created a penalty exposure amount of \$200,000. (*Id.*) Again, Defendant disputed this claim claiming that there is no documentary evidence suggesting rest break violations and the handwashing activities or other work-related activities were not supposed be done during any rest breaks. (*Id.*) Given this claim was in dispute, no documentary evidence showing rest break violations, and the Court's discretion when accessing penalties, provided for a discount of 75% rendering the value of this claim to claim to \$44,000 ($\$152,000 + \$200,000/2 \times .25$). (*Id.*) Given the increased amount of aggrieved employees, this amount was increased by 28.6% from the discounted amount resulting in a modified amount of \$56,684 ($\$44,000 + \$44,000 \times .286$). (*Id.*)

4. Minimum Wage and Overtime Violations

It was alleged that aggrieved employees had to perform pre-shift and post-shift work activities. (Supp Jackson Decl. ¶ 6. c.) Defendant disputes that any aggrieved employees had to perform pre-shift or post-shift work. (*Id.*) There is no documentary evidence that was discovered to confirm whether off-the-clock work was performed. (*Id.*) Given this disputed fact, this claim

1 was realistically valued at \$40,000 applying a 90% discount. ($\$400,000 \times .10$). (*Id.*) Given the
2 increased amount of aggrieved employees, this amount was increased by 28.6% from the
3 discounted amount resulting in a modified amount of \$51,440 ($\$40,000 + \$40,000 \times .286$).

4 5 5. Wage Statement Violations

6 The wage statement claim exposure based upon the increased amount of aggrieved
7 employees is \$64,300 ($\$50,000 + \$50,000 \times .286$). (Supplemental Declaration of Armond M.
8 Jackson ¶ 6. d.)

9 6. 203 Penalty Violations

10 This penalty claim is based upon purported minimum wage or overtime violations. Since
11 the maximum exposure for the minimum wage and overtime violations amounted applied an
12 90% discount given the lack of documentary evidence and disputed facts, the same discount rate
13 would apply to these claims as the overtime and minimum wage claims supported the 203
14 violations. (Supp Jackson Decl. ¶ 6. e.) The realistic evaluation after applying discounts amounts
15 to \$7,411.2 (maximum exposure $\$74,112 \times .1$) in penalties. (*Id.*) Given the increased amount of
16 aggrieved employees, this amount was increased by 28.6% from the discounted amount resulting
17 in a modified amount of \$9,530.80 ($\$9,530.80 + \$9,530.80 \times .286$). (*Id.*)

18 7. Total Realistic Exposure

19 Given the 28.6% increase in the number of aggrieved employees, the total realistic
20 exposure taking into consideration the increase in the number of aggrieved employees and
21 discounted evaluations would amount to \$295,122.8. (Supp Jackson Decl. ¶ 6. f.) The result of
22 \$262,000 achieved amounts to an 88.7% recovery rate based upon the realistic exposure amount
23 for the claims pending when taking into consideration likelihood of success on the merits given
24 the defenses and the Court's discretion to discount penalties.

25 **b. REVISED SETTLEMENT DISTRIBUTION**

26 The amended PAGA Settlement Agreement provides a gross settlement of all PAGA
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1 penalties for \$262,000. (Supplemental Declaration of Armond M. Jackson ¶ 1, Ex. A, p. 1,
2 Section 1.) This settlement amount covers civil penalties (to be shared between the LWDA and
3 aggrieved employees), as well as attorneys' fees, litigation costs, enhancement fees, and
4 settlement administration costs. (*Id.*)

5 Under the agreement, the updated settlement amount will be distributed as follows:

6 1) PAGA Payment Amount: \$153,438.63,

7 a. Seventy-Five percent to the LWDA: \$115,078.97

8 b. Twenty-Five percent to aggrieved employees: \$38,359.66.

9 2) Attorneys Fees (33.33%): \$86,460 (fees incurred: \$96,009.90; See Supp Jackson
10 Decl., Ex. D);

11 3) Litigation Costs: \$9,101.37 (See Supp Jackson Decl. ¶ 7, Ex. E)

12 4) Administration Costs: \$8,000 (See Supp Jackson Decl. ¶ 2, Ex. C, estimated to be
13 higher than the \$4,000 quoted amount given the increase from 185 to 238 aggrieved
14 employees); and

15 5) Plaintiff's Enhancement: \$5,000.

16 (Supp Jackson Decl. ¶ 1, Ex. A, p. 6, pgh. 25.)

17 The amount to be distributed to the PAGA group will be paid on a pro-rata basis by
18 multiplying the net settlement amount by the ratio of (i) the number of pay periods worked by
19 the Aggrieved Employee during the Release period to (ii) the total number of pay periods
20 worked by all Aggrieved Employees during the release period. (Supp. Jackson Decl. ¶ 1, Ex. A,
21 p. 7, pgh. 26, Section d.)

22 **II. CONCLUSION**

23 For the reasons set forth herein, Plaintiff requests that the Court approve the proposed
24 settlement; approve the proposed notice; and adopt the Order filed concurrently herein.

25 Dated: March 23, 2022

JACKSON APC

A PROFESSIONAL CORPORATION

By: /s/ Armond M. Jackson

Armond M. Jackson

Attorney for Plaintiff Maria Velez

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