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Attorneys for Plaintiff Jenny Hines, in her capacity as Private Attorney General Representative

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JENNY HINES, an individual, on behalf of the State of California, as a private attorney general, and on behalf of all aggrieved employees, Plaintiff,	) Case No: 20STCV24579)) DECLARATION OF JAMES M. TREGLIO,) ESQ., IN SUPPORT OF PLAINTIFF’S) MOTION TO APPROVE PAGA) SETTLEMENT
v.	)
FIELD AGENT, INC., a Delaware corporation; and DOES 1 to 100, inclusive Defendants.	) <u>Hearing:</u>) Date: November 28, 2023) Time: 8:30 a.m.) Dept.: 14) Hon. Kenneth R. Freeman)))

I, James M. Treglio, declare as follows:

1. I am an attorney at law duly authorized to practice law in the State of California. I am the lead attorney of the class action division for the law firm of Potter Handy, LLP, counsel for Plaintiff Jenny Hines (“Plaintiff”). I have personal knowledge of the following facts and if called upon as a witness I could and would competently testify to the matters stated herein.

2. This declaration is made in support of Plaintiff’s motion to approve PAGA settlement pursuant to Private Attorneys General Act of 2004 (“PAGA”), for an order granting final approval of the settlement of this case (“Motion”).

1 3. A PAGA Notice was filed by Plaintiff against Defendant Field Agent, Inc.
2 (“Defendants”) on March 10, 2020 for Defendant’s alleged violation of the California Private
3 Attorney Generals Act of 2004, Labor Code §2698, et seq. The Labor & Workforce Development
4 Agency (“LWDA”) did not notify Plaintiff that it intended to further investigate or pursue these
5 allegations within sixty-five (65) days of the postmark date of the PAGA letter.

6 4. Plaintiff filed a Complaint on June 26, 2020, in Los Angeles County Superior Court on
7 behalf of herself and the Allegedly Aggrieved Employees for claims alleged in the March 10, 2020
8 notice to the LWDA. In his Complaint, Plaintiff contends that Defendant violated California law by
9 misclassifying Plaintiff and the Allegedly Aggrieved Employees as independent contractors, failing to
10 pay for all hours worked, failing to pay overtime wages, failing to provide accurate wage statements
11 and maintain accurate records, failing to provide meal periods or pay premiums in lieu thereof, failing
12 to provide rest periods or pay premiums in lieu thereof, and making improper deductions from wages
13 and failure to reimburse.

14 5. On August 9, 2022, Plaintiff and Defendant participated in a full day mediation with
15 private mediator Steven J. Rottman, Esq. As a result of the mediation and further negotiations of the
16 Parties, a global settlement was reached resolving all claims in this lawsuit. After several months of
17 further negotiations, the parties reached an agreement in principle and fully executed a settlement
18 agreement on December 14, 2022. (“Settlement,” attached as Exhibit 1).

19 6. Defendant at all times disputed and denied, and continues to dispute and deny, that it
20 was ever liable to Plaintiff, or any other person, for any of the claims asserted in the Complaint,
21 including the claims for penalties under PAGA. Defendant contends there are 9,464 individuals being
22 affected by the allegations raised in Plaintiff’s PAGA notification and Representative Action
23 Complaint.

24 7. Plaintiff conducted extensive informal discovery to ascertain the above-referenced
25 facts.

26 8. The proposed Settlement involves the formation of a non-reversionary fund totaling
27 \$135,000.00 (“Gross Settlement Fund”). The \$135,000.00 fund that is created will be used to pay
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1 attorney fees and litigation costs (not to exceed \$40,500.00 in fees plus \$5,000.00 costs subject to
2 Court approval), and settlement administration costs (\$28,500.00 subject to Court approval) to
3 Simpluris, Inc. The Settlement Fund is thus \$61,000.00. Seventy-five percent (75%) of the remaining
4 Settlement Fund (i.e. (\$45,750.00) will be distributed to the California Labor & Workforce
5 Development Agency (“LWDA”) as required by the PAGA and the remaining twenty-five percent
6 (25%) (i.e. approx. \$15,250.00) will be distributed to all Allegedly Aggrieved Employees on a pro rata
7 basis depending on how many shopping/market research related tasks each Allegedly Aggrieved
8 Employee performed during the PAGA Period.

9 9. The total settlement of \$135,000.00 for approximately 9,464 agents equates to an
10 approximate \$1.61per aggrieved employee, 60% of Agents completed 5 or fewer shopping
11 assignments over the course of 3.5 years. Reflecting the fact that Agents performed one-off tasks and
12 worked only sporadically, each Agent earned, on average, \$83.00 over the course of an entire year.
13 Only 1% of the total Allegedly Aggrieved Employees figure will get the lion’s share of the settlement.
14 After payment of administration, requested fees and costs the proposed settlement will provide
15 approximately \$61,000, of which \$45,750 will be paid to the LWDA and \$15,250 to the Allegedly
16 Aggrieved Employees.

17 10. Defendant will fund the Gross Settlement Amount in a Qualified Settlement Fund
18 (“QSF”) established by the Settlement Administrator in three (3) installment payments. (Settlement
19 Agreement ¶28). Within fifteen (15) business days of deposit of the third and final installment
20 payment, the Settlement Administrator will issue to each Allegedly Aggrieved Employee a check for
21 his/her/their Individual PAGA Payment at his/her/their last known home address along with an
22 explanatory letter, attached as Exhibit A. Checks will remain negotiable for 180 days. Any checks
23 returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular
24 First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided,
25 for those settlement checks returned as undeliverable and those settlement checks remaining un-
26 cashed for more than 180 days after issuance, the Settlement Administrator shall escheat those checks
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1 to the State Controller's Office, Unclaimed Property Division, in the name of the Allegedly Aggrieved
2 Employee. (Settlement Agreement ¶41).

3 11. Pursuant to Labor Code §2699(1)(2), the Settlement and the Motion have been
4 concurrently submitted to the LWDA. (Proof of electronic submission is attached as Exhibit "2")

5 12. Plaintiff's theory centers around Defendant's numerous violations against Plaintiff and
6 the aggrieved employees including misclassifying Plaintiff and the Allegedly Aggrieved Employees as
7 independent contractors, failing to pay for all hours worked, failing to pay overtime wages, failing to
8 provide accurate wage statements and maintain accurate records, failing to provide meal periods or pay
9 premiums in lieu thereof, failing to provide rest periods or pay premiums in lieu thereof, and making
10 improper deductions from wages and failure to reimburse. Defendant maintains data for all
11 approximate 9,464 Allegedly Aggrieved Employees, this particular action is somewhat unique in that it
12 the vast majority of the Allegedly Aggrieved Employees — 60% of Agents completed 5 or fewer
13 shopping assignments over the course of 3.5 years. Reflecting the fact that Agents performed one-off
14 tasks and worked only sporadically, each Agent earned, on average, \$83.00 over the course of an entire
15 year. Only 1% of the total Allegedly Aggrieved Employees figure will get the lion's share of the
16 settlement.

17 13. Plaintiff sought PAGA penalties alleging that Defendant failed to comply with or
18 provide the Allegedly Aggrieved Employees with compensation or penalties as required by state law,
19 including claims and potential claims for penalties recoverable under PAGA concerning wages,
20 including misclassifying Plaintiff and the Allegedly Aggrieved Employees as independent contractors,
21 failing to pay for all hours worked, failing to pay overtime wages, failing to provide accurate wage
22 statements and maintain accurate records, failing to provide meal periods or pay premiums in lieu
23 thereof, failing to provide rest periods or pay premiums in lieu thereof, and making improper
24 deductions from wages and failure to reimburse. Defendant vehemently opposed the claims, arguing
25 that Plaintiff and the Allegedly Aggrieved Employees were properly compensated. Moreover,
26 Defendant argued that it had shut down its California operations, and that the vast majority of the
27 Allegedly Aggrieved Employees completed 5 or fewer shopping assignments over the course of 3.5
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1 years, with most working just a few weeks. Based on these arguments, Plaintiff believed the Court
2 would likely reduce the value of the claims to just those 1% of the total Allegedly Aggrieved
3 Employees figure. Thus, Plaintiff valued the PAGA claims at \$400,000.

4 14. Therefore, collectively, Plaintiff estimated that the likely value of the PAGA claims at
5 trial is \$400,000. The Settlement Amount under the terms of this Settlement is \$135,000.00, which
6 represents 27% recovery of the realistic total maximum exposure. It is common knowledge that a 20-
7 30% recovery of the total realistic maximum exposure in representative actions is generally deemed a
8 good result; 40-50% is overwhelming, successful and somewhat rare, and anything above 50% serves
9 as a phenomenal result that is noteworthy. The proposed Settlement represents 27% recovery for the
10 State and Allegedly Aggrieved Employees.

11 15. This result is positive and favorable to the State, which will receive \$45,750 and for the
12 Allegedly Aggrieved Employees, who will receive \$15,250. The Allegedly Aggrieved Employees will
13 receive \$1.61 per aggrieved employee, which is similar to but in most instances better than a
14 settlement/judgment on a class-wide basis. Payments to Allegedly Aggrieved Employees will be based
15 on how many shopping/market research related tasks each Allegedly Aggrieved Employee performed
16 during the PAGA Period.

17 16. In mediation, it was disclosed that Defendant had ended all California operations, and
18 had limited ability to pay a settlement on a broader scale.

19 17. Coupled with the nature of the Defendant's operations – where the vast majority of
20 Allegedly Aggrieved Employees completed 5 or fewer shopping assignments over the course of 3.5
21 years. Reflecting the fact that Agents performed one-off tasks and worked only sporadically, each
22 Agent earned, on average, \$83.00 over the course of an entire year.

23 18. Like Plaintiff, the Court would likely be more concerned about the 1% of the total
24 Allegedly Aggrieved Employees figure who worked regularly for Defendant.

25 I declare under penalty of perjury under the laws of the United States that the foregoing is true
26 and correct and this declaration is executed this November 3, 2023 in San Diego, California.

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/s/ James M. Treglio

James M. Treglio