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SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER

VERNELL BATTLE, JR., on behalf of himself
and other similarly-situated employees,

Plaintiff,

vs.

SAFRAN CABIN, INC., a Delaware
Corporation; and DOES 1 through 25, inclusive,

Defendants.

CASE NO. 30-2020-01140831-CU-OE-CXC
ASSIGNED FOR ALL PURPOSES TO:
The Honorable Peter J. Wilson
Department CX 102

CLASS ACTION

**SUPPLEMENTAL BRIEFING IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Continued Hearing Information

Date: January 5, 2023

Time: 2:00 p.m.

Dept: CX 102

Judge: Hon. Peter J. Wilson

Complaint filed: May 26, 2020

Trial date: Not set

On October 12, 2022, the Court issued a Tentative Ruling on Plaintiff's Motion for Order Granting Preliminary Approval of Class Action Settlement, ("Tentative Ruling"), continuing the hearing to December 1, 2022, to allow for supplemental filing to address the Court's concerns and to provide additional information. Plaintiff Vernell Battle, Jr. provides this supplemental brief in response to the Court's Tentative Ruling. Plaintiffs refer the Court to the Points and Authorities in Support of Motion for Order Granting Preliminary Approval of Class Action Settlement filed August 11, 2022 and the Errata filed on October 7, 2022, and incorporates the facts, authorities, and analysis therein by reference.

I. AS TO THE SETTLEMENT

The Court's October 13, 2022 Order outlined the following issues with the Settlement, which Plaintiff addresses below.

1. PAGA Notices submitted to the LWDA

The Court asked that all the PAGA Notices submitted to the LWDA be submit to the Court. Plaintiff will submit all PAGA Notices submitted to the LWDA to the Court. Supplemental Declaration of Isam C. Khoury, ("Supp. Khoury Decl."), ¶4, Exh. A - PAGA Notices submitted on April 28, 2020 and October 22, 2021.

2. Related or Overlapping Matters

The Court asked whether there are any related or overlapping matters that may be affected by this Settlement. Plaintiff is aware of one related matter entitled *Ramona Canakie v. Safran Cabin, Inc., et al* ("Canakie"), Case No. 30-2021-01222644-CU-OE-CXC, filed on September 9, 2021 in the Superior Court County of Orange. Plaintiff's counsel has previously communicated with counsel for plaintiff in *Canakie* and based on those communications, the *Canakie* case will not be impacted by this Settlement. *Supp. Khoury Decl.* ¶5.

3. Waiting Time Penalties and the Individual Settlement Payments

The Court asked how the waiting time penalties are accounted for in the calculation of the Individual Settlement Payments. Here, the parties did not negotiate a separate amount for waiting time penalties for the former employees. *Supp. Khoury Decl.* ¶6. This is because the only claim which arguably supported waiting time penalties is the unpaid wages claim based on Defendant's rounding

1 practice. At the time of mediation, the Supreme Court had not yet decided *Naranjo v. Spectrum Security*
2 *Services, Inc.*, 13 Cal.5th 93 (2022), finding meal and rest period violations supported derivative wage
3 statement claims. Therefore, only the unpaid wages due to rounding could arguably support waiting
4 time penalties. However, if the parties ultimately litigated this claim, Defendant's defenses would more
5 than likely have resulted in no imposition of waiting time penalties because a good faith dispute exists
6 that any wages are due. *Id.*

7 The definition of "willful" for purposes of Labor Code § 203 has been determined by the
8 California courts and is summarized at Title 8, California Code of Regulations, § 13520: "A willful
9 failure to pay wages within the meaning of Labor Code Section 203 occurs when an employer
10 intentionally fails to pay wages to an employee when those wages are due." No waiting time penalties
11 would be imposed upon the employer if there is a "good faith dispute" concerning the amount of the
12 wages that are due. According to Title 8, California Code of Regulations, § 13520, a **"good faith**
13 **dispute" that any wages are due occurs when an employer presents a defense, based in law or**
14 **fact which, that if successful, would preclude any recovery on the part of the employee."**
15 (Emphasis added.)

16 The statute is designed "to compel the prompt payment of earned wages; the section is to be given
17 a reasonable but strict construction." *Barnhill v. Robert Saunders & Co.*, 125 Cal. App. 3d 1, 7 (1981).
18 "The object of the statutory plan is to encourage employers to pay amounts concededly owed by [them]
19 to [a] discharged or terminated employee without undue delay and to hasten settlement of disputed
20 amounts." *Triad Data Services, Inc. v. Jackson*, 153 Cal. App. 3d Supp. 1, 11 (1984); *Mamika v. Barca*,
21 68 Cal. App 4th 487, 492 (3rd Dist. 1998).

22 Plaintiff alleged Defendant's rounding practice, which allowed employees to clock in up to seven
23 minutes before the start of their scheduled shift, underpaid wages. Supp. Khoury Decl. ¶7. Defendant
24 argued that the pre-shift minutes constituted a grace period and were not subject to rounding rules
25 because employees were not expected to, and did not, perform any work during the pre-shift time.
26 Defendant pointed to its written policy which provides, "The employee should not work or clock in
27 more than seven minutes before their scheduled shift," and contended that their policy was compliant
28 since employees were not expected to or required to engage in work prior to their start time. Supp.

1 Khoury Decl. ¶8. Therefore, if the parties litigated this case, Defendant’s good faith defense would
2 preclude the imposition of waiting time penalties under section 203.

3 The overall impact of rounding at the shift level was small and the unpaid wages claim amounted
4 to a total of \$313,965 (7585 “unpaid” hours x \$18.11 x 1.5 OT rate = \$227,489 plus interest of \$76,474).
5 Plaintiff’s own damages amount to an estimated loss of approximately \$302 during his four-year tenure.
6 Supp. Khoury Decl. ¶9. However, Defendant’s practice of rounding only impacted a certain group of
7 production employees, including Plaintiff, but not the entire class, and the practice ended in 2020. Thus,
8 the value of this claim is even further diminished. *Id.*

9 **4. Individual PAGA Payments**

10 The Court asked Plaintiff to address why the Individual PAGA Payments are based on
11 Workweeks when the PAGA penalties are based on pay periods. Although the PAGA penalties were
12 calculated based on estimated pay periods for purposes of mediation, it ultimately benefits the PAGA
13 Class Members to base their Individual PAGA Payments on Workweeks rather than pay periods
14 because, (1) there are two workweeks in a pay period, and (2) the pay data maintained by Defendant
15 was not in usable format during the entire class period and using workweeks provides a more accurate
16 allocation. Supp. Khoury Decl. ¶10.

17 The Settlement provides \$62,500 (equal to 25% of the \$250,000 PAGA allocation) shall be
18 distributed to PAGA Members. The Settlement Administrator will calculate each PAGA Member’s
19 Individual PAGA Payment by dividing the 25% of the PAGA Payment to be distributed to Class
20 Members by the total number of Workweeks for all PAGA Members; and then multiplying the PAGA
21 Workweek Value by the number of Workweeks worked by each Class Member. Supp. Khoury Decl.
22 ¶11.

23 Here, there are an estimated 68,592 pay periods in the PAGA Period. Since there are two
24 workweeks in each pay period, there would be approximately 137,184 workweeks in the PAGA Period.
25 Supp. Khoury Decl. ¶12. For example, the Individual PAGA Payments calculation based on workweeks
26 would be calculated as follows: \$62,500 (PAGA allocation/25% of \$250,000) divided by 137,184
27 (estimated total workweeks worked by all PAGA Members in the PAGA Period) = \$0.46 per
28 workweek. Therefore, an individual who worked 100 workweeks would receive a total payment of

1 \$46.00, which equals \$92 per pay period. If the calculation is done using pay periods instead of
2 workweeks, the calculation is as follows: \$62,500 divided by 68,592 (PP) = \$0.912 per pay period. An
3 individual who worked 100 workweeks would've worked 50 pay periods and would receive a total
4 payment of \$45.60 (0.912 x 50). The result is nearly the same. Given that there are two workweeks in
5 each pay period, using workweeks for the calculation of Individual PAGA Payments does not
6 drastically impact the total PAGA payment each PAGA Class Member shall receive. Supp. Khoury
7 Decl. ¶13.

8 Furthermore, since the pay data maintained by Defendant was not in usable format during the
9 entire class period, it is more accurate to use workweeks rather than attempt yet another burdensome
10 calculation based on extrapolations and estimates for pay periods. Supp. Khoury Decl. ¶14.

11 **5. Notice Period**

12 Based on the Court's Guidelines, a 60-day notice period is adequate. The Court inquired why the
13 notice period should be shortened to 45 days in this case. The parties have agreed to change the notice
14 period to 60-days and have revised the Settlement Agreement to reflect this change. Supp. Khoury
15 Decl. ¶15.

16 **6. Final Decision Regarding Disputes**

17 The parties have revised the Settlement Agreement, through an Addendum, to reflect that all
18 disputes submitted by Class Members shall be submitted to the Court. The Court shall have the right to
19 review any decision made by the Settlement Administrator regarding a workweek dispute and the Court
20 shall have the right to make the final decision on disputes. Supp. Khoury Decl. ¶16, Exh. B – Addendum
21 to Joint Stipulation of Class Action and PAGA Settlement and Release.

22 **7. Objections by Class Members**

23 The parties have revised the Settlement Agreement, through an Addendum, to reflect that in
24 addition to submitting a written objection, Class Members have the right to object in person or through
25 their own counsel at the hearing for Final Approval. Supp. Khoury Decl. ¶17.

26 **8. Continuing Jurisdiction**

27 The parties have revised the Settlement Agreement, through an Addendum, to reflect that the
28 Court has continuing jurisdiction under Cal. Code Civ Proc. Section 664.6. Supp. Khoury Decl. ¶18

II. ISSUE RE CLASS NOTICE

The Class Notice has been revised consistent with the revisions made to the Settlement Agreement, detailed above. Certified translations of the Class Notice in Spanish and Vietnamese are attached to the proposed Order as Ex. 1. The name of the Judge in Section 1 of the Class Notice has been corrected to Judge Wilson. Supp. Khoury Decl. ¶¶19-21, Exhs. C (Clean Class Notice) and D (Redlined Class Notice). The Settlement Administrator will make the operative complaint, the Settlement Agreement, the Class Notice, and the motions for preliminary approval and final approval, accessible on its website. Supp. Khoury Decl. ¶22.

III. ISSUES RE PROPOSED ORDER

The Proposed Order, filed herewith, has been revised consistent with the issues addressed above and in the Court's October 13, 2022 Order. Supp. Khoury Decl. ¶23, Exh. E (Redlined Proposed Order).

IV. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS

As set forth in the Joint Stipulation of Class Action and PAGA Settlement and Release, the Parties propose the following schedule for the fairness hearing and final proceedings:

<u>Action</u>	<u>Proposed Deadline</u>
1. Preliminary Approval Order	January 5, 2023
2. Class Data provided to Administrator	January 19, 2023 [14 calendar days of entry of Order Granting Preliminary Approval]
3. Mail Notice to the Class	February 3, 2023 [15 calendar days of receiving Data]
4. Notice Response Deadline:	April 14, 2023 [70 calendar days from date Administrator mails Notice Packet to Class - 60 calendars days plus 10 calendar day extension for re-mailed packets]
5. File Motion for Final Approval and Administrator's Declaration Re Claims	May 9, 2023 [16 court-days in advance of Hearing]
6. Final Approval Hearing:	June 1, 2023 at 2:00 p.m.

Respectfully submitted,

COHELAN KHOURY & SINGER
DAVTYAN LAW FIRM, INC.

Dated: December 22, 2022

By: 
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Marta Manus
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