

1 DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
2 ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
3 SEPIDEH ARDESTANI, ESQ. SBN 274259
sepideh@gaineslawfirm.com
4 **GAINES & GAINES, APLC**
5 27200 Agoura Rd., Suite 101
Calabasas, CA 91301
6 Telephone: (818) 703-8985
7 Facsimile: (818) 703-8984

8 Attorneys for Melinda Leon on behalf of herself and all "Aggrieved Employees" pursuant to
Labor Code § 2698 *et seq.*

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ORANGE - CENTRAL JUSTICE CENTER**

12 MELINDA LEON, on behalf of
herself and all "Aggrieved Employees"
13 pursuant to Labor Code § 2698 *et seq.*,

14 Plaintiffs,

15 v.

16 SC RETAIL, LLC, a Delaware limited
17 liability company, and DOES 1
through 10, inclusive,

18 Defendants.
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CASE NO: 30-2020-01150886-CU-OE-CXC

Assigned for all purposes to:
Hon. Glenda Sanders, Dept. CX101

**SUPPLEMENTAL DECLARATION OF
DANIEL F. GAINES IN SUPPORT OF
UNOPPOSED MOTION AND MOTION
FOR AN ORDER AND JUDGMENT
APPROVING SETTLEMENT OF
CLAIMS BROUGHT PURSUANT TO
THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, AWARDED
ATTORNEYS' FEES, COSTS,
GENERAL RELEASE PAYMENT,
REIMBURSEMENT OF SETTLEMENT
ADMINISTRATION EXPENSES AND
DISMISSING ACTION**

Date: January 14, 2022

Time: 1:30 p.m.

Dept.: CX103

**Reservation ID #: (CONTINUED PER
COURT'S SEPTEMBER 9, 2021
ORDER)**

1 I, DANIEL F. GAINES, declare as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California.
3 I am a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Melinda Leon in this
4 action. I have personal knowledge of the facts set forth herein and if called as a witness to
5 testify to them, could and would do so competently.

6 2. I submit this supplemental declaration in response to the Court's Minute Order
7 dated September 9, 2021 (the "Order"). A true and correct copy of the Order is attached
8 hereto as **Exhibit A**. The issues raised therein are addressed as follows:

9 3. As the Court points out in the Order, the Settlement reached in this matter settles
10 and releases all claims that arose during the Settlement Period for civil penalties under PAGA
11 for missed or denied rest periods. The rest period claims are defined in the Settlement
12 Agreement as the "Remaining Claims."

13 4. All other claims alleged in the complaint are not being settled or released, but
14 are instead being dismissed *without prejudice*, including claims for: (1) failure to pay overtime
15 wages (§§ 510, 558 and 1194); failure to pay wages for denial of proper meal periods (§§
16 226.7, 512, 558 and IWC Wage Order 4-2001); (3) failure to provide suitable seats (§ 1198
17 and Wage Order 4-2001, § 14); (4) failure to provide accurate wage statements (§ 226(a));
18 and (5) failure to pay all wages due at the separation of employment (§§ 201, 202) (hereinafter,
19 the "Non-Settled Claims").

20 5. The Non-Settled Claims were not included in the Settlement, and are not being
21 released therein, based upon the information that Defendant provided in informal discovery
22 and Plaintiff's pre-mediation investigation of the alleged claims. As detailed in the Motion,
23 my firm analyzed our client's time records and wage statements from the relevant time period
24 which revealed that there were few potential meal break violations and meal break premiums
25 were frequently paid. Problematically, we found that the evidence produced also confirmed
26 Defendant's position that its employees were provided with chairs to sit on during their work
27 shifts. However, we specifically investigated each of the Non-Settled Claims as follows:

1 6. Overtime Wages: Plaintiff asserted that Defendant failed to pay overtime
2 wages due based on the time entries contained on Plaintiff's wage statements. Specifically,
3 in addition to listing Plaintiff's rates of pay and the number of hours worked at each rate, they
4 also included time card detail for each day worked during that pay period. The time card detail
5 reflected each of Plaintiff's time stamps (in and out), along with the total time worked on each
6 date. For a number of dates, however, the total time appeared to exceed eight hours, indicating
7 overtime hours. However, the "Earnings" section of the wage statement did not appear to
8 reflect that the overtime hours were paid. Based thereon, Plaintiff alleged Defendant failed
9 to pay overtime and owed wages to all of its non-exempt employees. However, our closer
10 examination of these wage statements and time records prior to mediation revealed that the
11 total hours reflected on the time card detail entries was miscalculated. Much of what appeared
12 to be overtime hours worked was in fact, not overtime, and where overtime was indeed
13 worked, it was paid (and reflected as paid) in the earnings on the wage statements. Based on
14 this error, we believe the claim for unpaid overtime wages had little to no value.

15 7. Meal Periods: Plaintiff alleged that Defendant failed to authorize and permit
16 its employees lawful meal periods on all shifts where meal periods were warranted and failed
17 to pay a premium wage when no meal period was provided. Prior to mediation, Defendant
18 provided my office with its employee handbook and all written policies pertaining to meal
19 periods for its non-exempt employees. These policies reflected that Defendant maintained a
20 lawful meal period policy in both English and Spanish. My office also analyzed all of
21 Plaintiff's detailed time records which reflected that Plaintiff generally took timely meal
22 breaks, and Defendant frequently paid her meal period premiums, as required by Labor Code
23 § 226.7. Defendant confirmed this policy and practice was consistent across its small
24 workforce. Based thereon, this claim appeared to have very little, if any, value whatsoever.

25 8. Seating: Plaintiff alleged that Defendant failed to provide suitable seating,
26 pursuant to the requirements of the Industrial Welfare Commission Wage Order 4-2001, § 14
27 and Labor Code § 1198, for gas station clerks to use when working the register. Simply put,
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1 despite Plaintiff's allegation, Defendant in fact produced evidence that seating was provided
2 to its gas station clerks, or at least made them available to employees who desired to use them.
3 Therefore, this claim essentially had no value.

4 9. Based on the information and evidence Defendant provided and its settlement
5 position, Defendant refused to pay any amount to settle the Non-Settled Claims. Since no
6 consideration was being offered, even though the claims were weak, Plaintiff refused to
7 provide any release for those claims. Consequently, the Settlement Agreement was drafted to
8 reflect that only the rest period claims were being released; the Non-Settled Claims were not
9 included in the release language; and the Non-Settled Claims were being dismissed without
10 prejudice, so other employees may pursue them if they so desire.

11 10. Further, the value attained by this Settlement of the rest period claim *only* is
12 comparable to what it would have been had all alleged claims been settled, released, and
13 compensated. Even assuming arguendo that Plaintiff had been able to prove some or all of the
14 allegations in support of her Non-Settled Claims, the Settlement reflects approximately 53%
15 of the full \$100 per PAGA violation at issue. This represents a fair value settlement, especially
16 where there are strong defenses to the claim, including the argument that location-restricted
17 rest periods are not *per se* unlawful and the fact that there was a competing rest break policy
18 which in fact permitted rest periods to be taken off-premises.

19 11. My firm and I have litigated PAGA claims for more than a decade; few if any
20 settlements for PAGA civil penalties recover (or judgments obtain) more than \$100 per
21 employee pay period (i.e., there is no "stacking" of penalties), even where multiple varying
22 (and even unrelated) violations of the Labor Code are alleged for each employee pay period.
23 Indeed, there is no authority that either strongly supports, let alone mandates, stacking of
24 PAGA penalties. As such, since this Settlement obtains a fair compromise of the potential
25 \$100 penalty for the alleged rest break violations, it is a valuable settlement, particularly
26 where employees were not required to forego the Non-Settled Claims.

12. Additionally, the Court asked why the Settlement refers to “claims” in the plural form, if it purports to be settling a single claim for rest period violations under PAGA. (§ 10 of the Settlement.) The statement, “Plaintiff shall dismiss all claims not arising out of the issue of missed or denied rest periods without prejudice,” refers to and means the Non-Settled Claims, which Plaintiff is dismissing without prejudice and not releasing. As the Settlement further states, “The claims that are not dismissed and are resolved herein are referred to as the “Remaining Claims.” Settlement, § 10. The plural “claims” is used because the settlement and release of the rest period claim also necessarily includes any and all potential derivative claims which stem directly from missed/denied rest periods for inaccurate wage statements, failure to pay all wages due or waiting time penalties.

13. Last, an Amended Proposed Order intended to resolve the issues raised in the Order is submitted herewith.

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct. Executed on October 29, 2021 at Calabasas, California.

Daniel F. Gaines
DANIEL F. GAINES

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PROOF OF SERVICE AND CERTIFICATION

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 27200 Agoura Road, Suite 101, Calabasas, CA 91301

On October 29, 2021, I served the foregoing document described as **SUPPLEMENTAL DECLARATION OF DANIEL F. GAINES IN SUPPORT OF UNOPPOSED MOTION AND MOTION FOR AN ORDER AND JUDGMENT APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004, AWARDED ATTORNEYS' FEES, COSTS, GENERAL RELEASE PAYMENT, REIMBURSEMENT OF SETTLEMENT ADMINISTRATION EXPENSES AND DISMISSING ACTION** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Amy R. Patton, Esq.
PAYNE & FEARS LLP
4 Park Plaza, Suite 1100
Irvine, California 92614

 X (BY x U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with United States postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

 (BY FACSIMILE TRANSMISSION) On , at a.m./p.m., at Calabasas, California, I served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was (818)703-8984 and the telephone number(s) of the receiving facsimile machine was () - . A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as complete and without error. Copies of the facsimile transmission cover sheet and the transmission report are attached to this proof of service.

 (BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

 (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

 X (UPLOADED TO LWDA WEB PORTAL) I caused the above-described document to be delivered to the Labor & Workforce Development Agency via online process at the PAGA Filing website (www.dir.ca.gov) in accordance with the procedure imposed by the LWDA.

I certify that the above document was printed on recycled paper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 29, 2021, at Calabasas, California.



JEREMY REYES