

COHELAN KHOURY & SINGER

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Jeff Geraci (SBN 151519)

jgeraci@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001

Facsimile: (619) 595-3000

LEBE LAW, APLC

Jonathan M. Lebe (SBN 284605)

jon@lebelaw.com

Zachary Gershman (SBN 328004)

zachary@lebelaw.com

777 S. Alameda Street, Second Floor

Los Angeles, CA 90021

Telephone: (213) 444-1973

Attorneys for Plaintiff Julio Ochoa, individually and
on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JULIO OCHOA, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

SPEECH AND LANGUAGE
DEVELOPMENT CENTER, INC.; and
DOES 1 through 25, inclusive

Defendants.

Case No. 30-2020-01143577-CU-OE-CXC
ASSIGNED FOR ALL PURPOSES TO:

The Honorable Lon F. Hurwitz

Department CX103

CLASS ACTION

SECOND SUPPLEMENTAL BRIEF
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL

Date: June 16, 2023

Time: 1:30 p.m.

Dept: CX103

Judge: Lon F. Hurwitz

Complaint filed: June 18, 2020

Trial date: Not set

On October 21, 2022, Hon. Glenda Sanders continued Plaintiff's Motion for Order Granting Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval"), and requested certain issues be addressed. (ROA #98). On March 17, 2023, the Court continued the Motion for Preliminary Approval and asked for clarification. (ROA #126). Plaintiff responds now to the Court's ruling.

To address part of the ruling, the Parties executed an Amendment to the Amended Settlement Agreement and Release of Class and Representative Action ("Amendment"). This amends the Amended Settlement Agreement and Release of Class and Representative Action ("Settlement Agreement" or "SA") previously filed with the Court as Exhibit 1 to the Supplemental Declaration of Jeff Geraci ISO Motion for Preliminary Approval (ROA #122).

Fully executed copies of the Amendment, and the Settlement Agreement, are submitted with this motion. The Amendment is Exhibit 1 to the Second Supplemental Declaration of Jeff Geraci, ("Second Supp. Geraci Decl."), ¶2. The Settlement Agreement is Attachment 1 to Notice of Filing Fully-Executed Amended Settlement Agreement and Release of Class and Representative Action.

I. PAGA RELEASE (ROA #126, NO. 2)

The Amendment to the Settlement Agreement clarifies that PAGA releases include only "claims for PAGA Penalties alleged in Plaintiff's May 13, 2020 PAGA Notice to the California Labor and Workforce Development Agency (LWDA)," and identifies Labor Code sections in the Notice alleged as a basis for penalties. Amendment ¶ 32; Second Supp. Geraci Decl. ¶4.

II. CLASS AND PAGA PERIODS AND RELEASE DATE (ROA #126, NO. 4)

The Settlement Agreement shows Class and PAGA periods ending March 13, 2020, as in the Class Notice and Proposed Order. SA ¶¶ 9, 25; Second Supp. Geraci Decl. ¶5.

The Release Date is July 19, 2021, in the Agreement and Class Notice. SA ¶ 31, Amendment ¶32, Exh. 1, (Class Notice) ¶12, Supp. Geraci Decl. ¶5. The Release Date was negotiated with the help of mediator, Hon. Carl West (Ret.), to be, as it most often is, the earlier of ninety days from the April 20, 2021 mediation date or the date of preliminary approval. Second Supp. Geraci Decl. ¶6.

1 Due to the COVID-19 Pandemic, Defendant, a non-profit school (“School”), was closed
2 by order of the Governor as of March 13, 2020. The proposed Class is “all persons employed by
3 Defendant in California as non-exempt employees at any time from April 6, 2016 through
4 March 13, 2020 (the “COVID Closure Date”).” Second Supp. Geraci Decl. ¶7.

5 On March 31, 2020, Plaintiff’s counsel formally requested his personnel file and
6 Defendant produced the requested documents April 30, 2020. On May 13, 2020, Plaintiff filed
7 LWDA charges. Plaintiff filed this action June 18, 2020. Second Supp. Geraci Decl. ¶8.

8 Alerted by these requests and filings before it began to reopen in August 2020, the
9 School hired a new payroll provider, revised its policies and procedures, and, among other
10 things, began to correctly calculate the regular rate for overtime wages, and automatically pay
11 premium wages for non-compliant meal periods. Based on the evidence produced, including
12 wage statements and time records before and after the revisions, the alleged violations did not
13 occur after March 13, 2020, and employees hired after that date are not included in the Class.
14 Second Supp. Geraci Decl. ¶9.

15 Class Members did not work for at least five months, some never returned, many
16 worked only intermittently when they did, and the policies alleged to cause violations were
17 corrected before their return. The release date, a negotiated settlement term, was ninety days
18 after mediation. This was reasonable, including because it was possible a final wage violation
19 could have occurred until that time, and multiple release dates based on whether and when a
20 class member returned to work would have been unworkable. Second Supp. Geraci Decl. ¶10.

21 **III. THERE ARE NO RELATED ACTIONS (ROA #126, NO. 7)**

22 The School employs workers in Orange County. Records were searched in Orange and
23 Los Angeles County Superior Courts, United States District Courts for Southern, Central,
24 Eastern, and Northern Districts, and the Department of Industrial Relations, PAGA Case
25 Search, by entering Defendant’s name in each website. No cases were found in Los Angeles or
26 District Courts. Five cases were found in Orange County, none for employment, class, or PAGA
27 claims. After inquiring of his client, Defense counsel advised there are no claims against
28 Defendant which could be influenced by this settlement. Second Supp. Geraci Decl. ¶11.

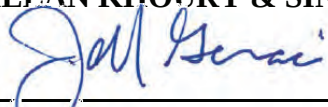
1 **IV. PROPOSED ORDER (ROA #126, NO. 8)**

2 The Proposed Order refers to the Register of Action number of the declaration to which
3 the Settlement Agreement was attached. (ROA # 122).

4 Respectfully submitted,

5 **LEBE LAW, APLC**
6 **COHELAN KHOURY & SINGER**

7 Dated: June 6, 2023

8 By:  _____

Jeff Geraci

9 Attorneys for Plaintiff Julio Ochoa, individually and
10 on behalf of all others similarly situated
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28