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11 individually and on behalf of other individuals
12 similarly situated

13 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

14 **COUNTY OF SANTA CLARA**

15 DAVID JIMENEZ, an individual, on his own
16 behalf and on behalf of all others similarly
17 situated,

18 Plaintiff,

19 v.

20 JOSEPH J. ALBANESE, INC., a California
21 corporation; and DOES 1 through 100, inclusive,

22 Defendant.

CASE NO. 20CV366581

[Assigned to Hon. Patricia M. Lucas]

23 **SUPPLEMENTAL MEMORANDUM IN**
24 **RESPONSE TO THE COURT'S**
25 **DECEMBER 7, 2022, ORDER RE:**
26 **MOTION FOR FINAL APPROVAL OF**
27 **CLASS ACTION SETTLEMENT**

28 Date: January 11, 2023

Time: 1:30 PM

Department: 3

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INTRODUCTION

On November 10, 2022, Plaintiff filed a motion for final approval of the agreement the parties negotiated to settle this putative class and PAGA action. On December 6, 2022, this Court issued a tentative ruling seeking modification to the settlement agreement to separately calculate payments to be made from the settlement of the class action and settlement of the PAGA action. The court held a hearing on December 7, 2022, adopted the tentative ruling as the order of the court, and continued the hearing to January 11, 2023. After the hearing, the parties committed to revising their settlement agreement. Plaintiff now submits a revised settlement agreement (“Settlement Agreement” or “SA,” attached to the Supplemental Declaration of Marcus J. Bradley (“Supp. Bradley Decl.”), Ex. A), a redlined version that identifies changes to the earlier Settlement Agreement submitted on January 28, 2022, as amended March 17, 2022. (Supp. Bradley Decl., Ex. B), this Memorandum responding to the Court’s December 7, 2022 Order and additional supporting evidence as outlined below. Plaintiff has endeavored to incorporate all of the Court’s guidance and to address all of the Court’s concerns and respectfully request that the settlement be granted final approval.

DISCUSSION OF REVISED SETTLEMENT AGREEMENT

I. Definition of the “Aggrieved Employees”

The parties have revised the Settlement Agreement to add a definition for “Aggrieved Employees” to mean :

the named Plaintiff in this Action and any California hourly non-exempt Laborers International Union of North America (LIUNA) employee who worked for Defendant during the “PAGA Period”, as defined below (collectively the “PAGA Aggrieved Employees”). The PAGA Aggrieved Employees does not include any individuals who already have resolved the claims asserted in the Action, whether by settlement or adjudication.

(SA ¶ I.C.; Supp. Bradley Decl. ¶ 6.)

II. Net Class Settlement Amount and Net PAGA Payment

The parties have revised the Settlement Agreement so that the Net Class Settlement Amount no longer includes any portion of the PAGA Payment. (SA ¶ I.Q.; Supp. Bradley Decl. ¶ 7.) A separate Net PAGA Payment definition has been added to separate the portion of the PAGA Payment to be distributed to Aggrieved Employees. (SA ¶ I. R.; Supp. Bradley Decl. ¶ 7.)

1 **III. Definition of “PAGA Period”**

2 The parties have revised the Settlement Agreement to add a definition for the “PAGA period”
3 to mean: “the period from May 13, 2019 through sixty (60) days from the date of the signing of the
4 fully executed settlement agreement or preliminary approval of the settlement, whichever comes
5 first.” (SA ¶ I. T.; Supp. Bradley Decl. ¶ 8.)

6 **IV. Class Settlement Share and PAGA Settlement Share**

7 The parties have revised the Settlement Agreement to separate the gross amount each Class
8 member and Aggrieved Employee are to receive. Participating Class Members will receive their
9 respective portion of the Net Class Settlement Amount as their “Class Settlement Share” (SA ¶ I. Z.)
10 and Aggrieved Employees will receive their respective portion of the Net PAGA Payment as their
11 “PAGA Settlement Share” (SA ¶ I. AA.; Supp. Bradley Decl. ¶ 9.)

12 **V. Class Settlement Shares Calculation**

13 The parties have revised the Settlement Agreement to allow for only Participating Class
14 Members to be included in the calculation of their respective portion of the Net Class Settlement
15 Amount (SA ¶ II.B.; Supp. Bradley Decl. ¶ 10.)

16 **VI. PAGA Settlement Shares Calculation**

17 The parties have revised the Settlement Agreement to provide a separate calculation for
18 payment to be made from the settlement of the PAGA action. Only Aggrieved Employees are
19 included in the calculation of their respective portion of the Net PAGA Payment. (SA ¶ II.E.) The
20 calculation of Aggrieved Employees’ PAGA Settlement Share:

21 An Aggrieved Employee’s PAGA Settlement Share will equal the Net PAGA
22 Payment times the ratio of the number of workweeks worked by the Aggrieved
23 Employee for Defendant during the PAGA Period on a “checks cashed” basis to
24 the total number of workweeks worked by all Aggrieved Employees during this
 period. The Plaintiff’s service award will be in addition to his allocated portion
 of the Net PAGA Payment.

25 (SA ¶ II.E.1.) This has the effect of excluding Class Members, who are entitled to participate
26 in the class settlement but who are not Aggrieved Employees, from participating in the PAGA
27 payment. Moreover, Class Member who submit a request for exclusion from the Class portion of the
28 settlement, and are Aggrieved Employees, will still receive their portion of the Net PAGA Payment

1 (SA ¶ II.E. 4.; Supp. Bradley Decl. ¶ 11.)
2

3 DATED: January 3, 2023

Respectfully submitted,

4 **BRADLEY/GROMBACHER LLP**

5
6 By: 

Marcus J. Bradley, Esq.

Kiley Lynn Grombacher, Esq.

Lirit A. King, Esq.

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action; my business address 31365 Oak Crest Drive, Suite 240, Westlake Village, CA 91361.

- On January 3, 2023, I served the foregoing documents described as
- (1) **SUPPLEMENTAL MEMORANDUM IN RESPONSE TO THE COURT'S DECEMBER 7, 2022, ORDER RE: MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
 - (2) **SUPPLEMENTAL DECLARATION OF MARCUS J. BRADLEY IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

on all interested parties in this action as follows: **SEE ATTACHED SERVICE LIST**

[X] **(BY E-MAIL)** On the above date, I served the above-mentioned document(s) by electronic mail to the parties' email addresses as they are known to me on the attached Service List. My email address is sboucher@bradleygrombacher.com. I did not receive, within a reasonable period of time, any indication that the transmission did not go through.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed January 3, 2023, at Westlake Village, California.



Suzette Boucher

Jimenez v. Joseph J. Albanese
Santa Clara County Superior Court
Case No.: 20CV366581

Service List

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