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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

JASON URREA, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

TEMECULA VALLEY HOSPITAL; and
DOES 1 through 20, inclusive,

Defendants.

Case No. RIC2002437

Assigned for all purposes to:

Hon. Harold W. Hopp

Dept. 1

**SUPPLEMENTAL BRIEF IN SUPPORT
OF MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL ACT
REPRESENTATIVE ACTION
SETTLEMENT**

Date: November 9, 2023

Time: 8:30 a.m.

Dept.: 1

1 **I. INTRODUCTION**

2 Plaintiff Jason Urrea (“Plaintiff”) provides this Supplemental Brief in response to the
3 Court’s tentative ruling on Plaintiff’s Motion for Approval of Private Attorneys General Act
4 Representative Action Settlement (“Motion for Approval”).

5 Concurrently with this Brief, Plaintiff submits a Revised [Proposed] Order Granting
6 Approval of Private Attorneys General Act Representative Action Settlement, and the Declaration
7 of Alex J. Valle in support of Plaintiff’s Motion for Approval with the following exhibits:

- 8 • Exhibit 1: Amended PAGA Settlement Agreement and Notice
9 • Exhibit 2: Redlined Amended PAGA Settlement Agreement and Notice
10 • Exhibit 3: Confirmation emails after submitting the Amended PAGA Settlement Agreement
11 to the LWDA.

12 Plaintiff addresses the Court’s concerns from the tentative ruling below:

13 **II. THE COURT’S TENTATIVE RULING**

14 **A. Total Amount of Penalties If Plaintiff Prevails on Each Alleged Violation at Trial.**

15 The Court seeks further clarification as follows:

16 *“Estimate of number of aggrieved employees, total amount of penalties if plaintiff*
17 *prevails on each alleged violation at trial, etc.*

18 Plaintiff provides supplemental briefing as follows:

19 The Parties estimate that there are 2,057 total Aggrieved Employees who worked for
20 Defendant during the PAGA Period (from May 27, 2019 through July 6, 2023). (Declaration of
21 Alex J. Valle (“Valle Decl.”), ¶ 3.) Defendant provided Plaintiff’s counsel with the timekeeping
22 and pay records for the Aggrieved Employees, which was analyzed by an expert hired by Plaintiff’s
23 counsel. (*Id.*) If the Court stacked different types of penalties in each Pay Period and Plaintiff could
24 recover penalties for every violation, then the calculations would be as follows:

25 Minimum Wage Claim: An expert retained by Plaintiff calculated the following exposure:
26 99,994 Pay Periods x \$100 x 44.9% violation rate for all shifts (for unpaid wages due to
27 Defendant’s alleged time rounding policies and failure to pay all wages for having employees
28 remain “on-call” for work) = \$4,489,730.60 as the total amount of penalties for unpaid wages

1 violations. (*Id.* at ¶ 4.) Plaintiff's expert found that these violations affected 19 Aggrieved
2 Employees for on-call reporting pay, and 1,916 Aggrieved Employees for rounding. (*Id.*)

3 Regular Rate of Pay Claims: An expert retained by Plaintiff calculated the following
4 exposure: 99,994 Pay Periods x \$100 x 10.5% violation rate (for failure to include bonuses in the
5 regular rates of pay) = \$1,049,937.00 as the total amount of penalties for overtime – regular rate
6 violations. (*Id.*) Although these violations occurred in 10.5% of total pay periods, Plaintiff's expert
7 found that they affected 961 Aggrieved Employees. (*Id.*)

8 Meal Period Claims: An expert retained by Plaintiff calculated the following exposure:
9 99,994 Pay Periods x \$100 x 88.2% violation rate (for meal periods violations allegedly shown in
10 the time records) = \$8,819,470.80 as the total amount of penalties for meal period violations. (*Id.*)
11 Plaintiff's expert found that these violations affected 2,024 Aggrieved Employees. (*Id.*)

12 Rest Break Claims: An expert retained by Plaintiff calculated the following exposure:
13 99,994 Pay Periods x \$100 x 99.2% violation rate (for rest breaks due to requiring Aggrieved
14 Employees to remain on the premises during their rest breaks) = \$9,919,404.80 as the total amount
15 of penalties for rest break violations. (*Id.*) Plaintiff's expert found that the rest break violations
16 affected all 2,057 Aggrieved Employees. (*Id.*)

17 Wage Statement Claims: An expert retained by Plaintiff calculated the following exposure:
18 99,994 Pay Periods x \$100 x 99.2% violation rate (for derivative wage statement penalties) =
19 \$9,919,404.80 as the total amount of penalties for wage statement violations. (*Id.*) Plaintiff's expert
20 found that the wage statement violations affected all 2,057 Aggrieved Employees. (*Id.*)

21 Assuming Plaintiff could fully prove each violation according to the violations rates that
22 are included herein and recover \$100.00 for every violation, the total amount of alleged PAGA
23 penalties against Defendant would be approximately \$34,197,948.00. (*Id.* at ¶ 5.) However,
24 Defendant disputed the expert's calculations, and could have defeated Plaintiff's claims by proving:
25 (1) its time rounding practices were neutral and often overpaid Aggrieved Employees; (2) the
26 bonuses were discretionary and therefore should not be included in the overtime or meal premium
27 rates of pay; (3) that only a small percentage employees actually earned bonuses during the relevant
28 time period; (4) only a small number of employees were ever required to work on-call; (5) that

1 employees actually left the premises during their rest periods; (6) the wage statement claims would
2 thus fail as they were purely derivative of the unpaid wage and overtime claims; (7) Defendant paid
3 meal and rest period premiums to its employees; and (8) employees waived their meal periods and
4 rest breaks. (*Id.* at ¶ 6.) The settlement negotiations took these risks into account. (*Id.*)

5 **B. Whether Violations are Knowing and Intentional.**

6 The Court seeks further clarification as follows:

7 *“Information about whether violations would be found to be knowing and*
8 *intentional or whether imposition of maximum penalties would be unjust, arbitrary,*
9 *oppressive, or capricious.”*

10 Plaintiff provides supplemental briefing as follows:

11 Under Labor Code § 2699, the Court has discretion to reduce any recovery of civil penalties
12 under PAGA if it would result in an award that is “unjust, arbitrary and oppressive, or
13 confiscatory.” (Lab. Code § 2699, subd. (e)(2).) A court may reduce a PAGA award in an instance
14 where it is shown that the defendant attempted to comply with the law. (*See Thurman v. Bayshore*
15 *Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135-1136, disapproved of on other
16 grounds by *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175.) Here, Plaintiff uncovered evidence
17 that Defendant attempted to comply with the Labor Code. (Valle Decl., at ¶ 7.) Notably, Defendant
18 had repeatedly filed Alternative Workweek Elections with the Department of Industrial Relations
19 covering various positions throughout the hospital. (*Id.*) These filings predated the PAGA Period,
20 and all were approved. (*Id.*) Additionally, although Plaintiff sought civil penalties under Labor
21 Code § 2698 *et seq.* (“PAGA”) for Defendant’s meal period and rest break violations, Defendants’
22 meal period and rest break policies and procedures were mostly compliant with California law,
23 and Class Members’ timekeeping and payroll records showed that the vast majority of the alleged
24 violations related to requiring Class Members to take rest breaks on-premises and the failure to
25 include bonuses in the regular rate of pay calculations for meal premiums. (*Id.*, at ¶ 8.) Plaintiff
26 also considered the possibility that the Court would reduce civil penalties under PAGA given that
27 Defendant’s business operates a local hospital. (*Id.*) As such, Plaintiff believed there were
28 mitigating factors that would cause the reduction of the full value of PAGA penalties that could

1 be recovered for each claim. (*Id.*) Plaintiff considered these possible reductions when negotiating
2 the Settlement. (*Id.*)

3 Furthermore, Plaintiff was able to attribute liability to Defendant regardless of whether
4 Defendant's wage statement violations were done in a "knowing and intentional" manner. A
5 plaintiff need only show that wage statement violations under Labor Code § 226 are "knowing and
6 intentional" when seeking damages and penalties under Labor Code § 226.3, rather than only
7 seeking civil penalties under PAGA. (*Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th
8 773, 774-775.) While Plaintiff alleged that Defendant distributed illegal wage statements that
9 failed to comply with under Labor Code § 226, he was only able to seek civil penalties under
10 PAGA for such violations, as the Court already dismissed Plaintiff's class claims that would have
11 sought to recover penalties under Labor Code § 226, subd. (e) on August 31, 2020. (Valle Decl.,
12 at ¶¶ 10–11.) As such, whether Defendant's violations were "knowing and intentional" would not
13 have been relevant to the settlement as Plaintiff only sought civil penalties under PAGA for such
14 violations.

15 When calculating civil penalties under PAGA, Plaintiff only applied the penalty amounts
16 associated with the initial violations under PAGA. (*Id.* at ¶ 12.) This is because the Ninth Circuit
17 held that a defendant is not subject to heightened penalties for any Labor Code violations unless it
18 is "notified by the Labor Commissioner or any court that it [is] subject to the California Labor
19 Code." (*Bernstein v. Virgin Am., Inc.* (9th Cir. 2021) 3 F.4th 1127, 1144.) Here, Plaintiff found no
20 evidence that Defendant was notified by the Labor Commission or any court as to Labor Code
21 violations. (Valle Decl., ¶ 12.) As such, Plaintiff did not believe subsequent violations had any
22 chance of being awarded. (*Id.*)

23 **C. The Release.**

24 The Court seeks further clarification as follows:

25 *"Why is the release broader than that in the CMO (both in definition of released*
26 *parties and who is releasing them)?"*

27 Plaintiff provides supplemental briefing as follows:

28 The Parties have revised the PAGA Settlement Agreement and the Notice of PAGA

1 Settlement, Settlement Payment and Release of Claims to limit the “Released Parties” to only
2 Defendant and “its officers, directors, employees and agents” as specified in Paragraph 8(b) of the
3 Court’s PAGA Case Management Order #1. (Valle Decl., Exhibit 1, p. 3, & Exhibit A, p. 2.) The
4 Parties have also revised the PAGA Settlement Agreement and the Notice of PAGA Settlement,
5 Settlement Payment and Release of Claims to clarify that the release is being given by “[t]he State
6 of California, including but not limited to the LWDA,” rather than by the Aggrieved Employees
7 as specified in Paragraph 8(a) of the Court’s PAGA Case Management Order #1. (*Id.*, Exhibit 1,
8 p. 7.)

9 **D. Limitation as to Released Claims.**

10 The Court seeks further clarification as follows:

11 *“Released claims not limited to those described in the notice sent to the LWDA and*
12 *alleged in the operative complaint.”*

13 Plaintiff provides supplemental briefing as follows:

14 The Parties have revised the PAGA Settlement Agreement and Notice of PAGA
15 Settlement, Settlement Payment and Release of Claims to limit the released claims to those
16 described in Plaintiff’s notice to the LWDA and alleged in the operative complaint, rather than
17 those that “could have arisen out of allegations made in the Operative Complaint and/or LWDA
18 letters.” (Valle Decl., Exhibit 1, p. 7, & Exhibit A, p. 2.)

19 **E. Revised Proposed Order.**

20 The Court seeks further clarification as follows:

21 *“Revise proposed order to consistently refer to the settlement agreement as PAGA*
22 *Settlement Agreement and not PAGA Settlement Agreement and Limited Release or*
23 *joint stipulation. Order should specify how funds will be distributed. Need date for*
24 *final accounting of distribution of funds and how uncashed checks will be handled,*
25 *as well as requiring settlement administrator to send reminder postcards to those*
26 *who haven’t cashed checks 60 days after mailing.”*

27 Plaintiff provides supplemental briefing as follows:

28 Based on the Court’s guidance, Plaintiff has revised the proposed order to refer to the

1 settlement agreement as “PAGA Settlement Agreement,” to specify that funds should be distributed
2 as stated in the Settlement, selected August 15, 2024 as the hearing date for final accounting (or a
3 later date that is convenient for the Court), to specify that uncashed checks will be sent to the
4 California State Controller’s Office Unclaimed Property Fund, and to specify that the Settlement
5 Administrator will send reminder postcards to those who have not yet cashed checks 60 days after
6 mailing. The Revised [Proposed] Order is filed concurrently herewith.

7 **III. CONCLUSION**

8 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement
9 pursuant to PAGA in this Action.

10 Dated: November 2, 2023

AEGIS LAW FIRM, PC

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13 By _____

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Attorneys for Plaintiff Jason Urrea