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On behalf of himself and all other aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF ORANGE**

MICHAEL DAW, on behalf of himself and  
all other aggrieved employees,

Plaintiff,

vs.

RRL CORPORATION; and Does 1-10,  
inclusive,

Defendants.

Case No.: 30-2020-01157398-CU-OE-CXC

Hon. Randall J. Sherman - Dept. CX-105

**PLAINTIFF MICHAEL DAW'S REPORT  
RE: COMPLIANCE WITH PROCEDURAL  
GUIDELINES FOR APPROVAL OF  
PRIVATE ATTORNEYS GENERAL ACT  
SETTLEMENT**

[Motion; Declaration of Jonathan M. Lebe;  
Declaration of Michael Daw; and [Proposed]  
Order Filed Concurrently Herewith]

**Hearing Information:**

Date: December 3, 2021

Time: 10:00 a.m.

Location: Dept. CX-105

Reservation No.: 73631040

Plaintiff Michael Daw (“Plaintiff”) respectfully submits that the proposed settlement is in compliance with the Court’s guidelines for PAGA settlement, as detailed below:

**Procedural Guidelines for Private Attorneys General Act (“PAGA”) Settlements:**

1) **Comprehensive Definition of Aggrieved Employees:** The PAGA Settlement has a comprehensive definition of the group of allegedly aggrieved employees represented in this action. (Lebe Decl., ¶ 17, Exhibit 4, Section I(C) [“All current and former non-exempt employees who performed work for Defendant within the State of California at any time during the PAGA Period”].)

2) **Definition of the PAGA Claims:** The PAGA claims are based on Defendant’s violations of the Labor Code. (Lebe Decl., ¶ 17, Exhibit 4, Section II(B) [“On August 27, 2020, Plaintiff filed his complaint, alleging, on behalf of himself, and other aggrieved employees, that Defendant violated PAGA as a result of Defendant’s wage and hour policies and practices. Specifically, Plaintiff alleges that Defendant failed to pay all wages, including minimum wages, regular wages, overtime and double time; failed to properly calculate overtime and double time wages; failed to provide meal breaks (including without limitation first and second meal breaks) each day based on the hours worked by each employee, including meal breaks that were short, late, interrupted, and/or missed altogether; failed to authorize and permit legally compliant rest breaks each day based on the hours worked by each employee, including rest breaks that were short, late, interrupted, and/or missed altogether; failed to both pay for sick leave and to pay for sick leave at the legally required rate; unlawful deduction of wages; failed to provide accurate and itemized wage statements; failed to reimburse for all necessary business expenses; and failed to timely pay all wages upon termination and/or resignation.”].)

3) **Gross Settlement Amount:** The Gross Settlement Amount is as follows:

a. **Plaintiff’s Enhancement:** The proposed settlement provides for a \$10,000 enhancement award to Plaintiff, which the Parties understand will be considered by the Court at final approval. (Lebe Decl., ¶ 17, Exhibit 4, Section I(R) [“The amount the Court awards to Plaintiff for his services as PAGA Representative, which will not exceed \$10,000. This payment

1 shall be paid from the Qualified Settlement Fund and will not be opposed by Defendant. This  
2 enhancement payment is subject to approval of the Court”].)

3           **b. Consideration Received by Aggrieved Employees:** Aggrieved  
4 Employees will receive a proportional share of the Net PAGA Payment based on the number of  
5 workweeks he or she was employed by Defendant during the PAGA period. (Lebe Decl., ¶ 17,  
6 Exhibit 4, Section V(B) [“For purposes of distributing each Individual PAGA Payment, all  
7 distribution payments will be made according to the number of workweeks each Aggrieved  
8 Employee was employed by Defendant during the PAGA Period, with each Aggrieved Employee  
9 being entitled to a share of the Net PAGA Payment allocated to the Aggrieved Employees based  
10 upon the Aggrieved Employee’s number of workweeks employed with Defendant during the  
11 specified period as a numerator and the total number of workweeks all Aggrieved Employees were  
12 employed with by Defendant during the PAGA Period as the denominator.”].)

13           **c. Allocation:** The Net PAGA Payment of approximately \$189,885.04 is  
14 allocated 75 percent/25percent as required by Section 2699(i). (Motion, Section IV [“After  
15 deducting the attorneys’ fees and costs, Settlement Administrator’s costs, and Plaintiff’s individual  
16 enhancement award, the remaining fund, anticipated to be \$189,885.04 (“Net PAGA Payment”)  
17 will be paid 75 percent (anticipated to be \$142,471.78) to the LWDA and 25 percent (anticipated  
18 to be \$47,471.26) to the aggrieved employees.”]

19           **d. Attorney’s Fees, Attorney’s Costs, and Administration Costs:** The  
20 proposed settlement provides for attorney’s fees up to 33 1/3% or \$108,333.33, which the Parties  
21 understand is subject to Court approval. (Lebe Decl., ¶ 17, Exhibit 4, Section I(D) [“The amount,  
22 not to exceed 33 1/3% of the Gross Settlement Amount or \$108,333.33, finally approved by the  
23 Court and awarded to PAGA Counsel. The Attorney Fee Award shall be paid from the Qualified  
24 Settlement Fund and will not be opposed by Defendant.”].) Plaintiff’s counsel costs incurred are  
25 \$11,281.63. (Motion, Section IV [“Additionally, Plaintiff’s counsel costs incurred are \$11,281.63,  
26 and shall be paid to Plaintiff’s counsel from the Gross Settlement Fund.”].) The Settlement  
27 allocates \$5,500 for administration costs. (Motion, Section IV [“The Settlement Administrator  
28

CPT Group, Inc.’s costs associated with administration of the Settlement is \$5,500 and shall be paid from the Gross Settlement Fund.”].)

e. **Other Amount(s) Deducted from Gross Settlement Amount:** There are no other additional deductions from the Gross Settlement Amount besides the deductions already mentioned.

4) **Aggrieved Employees’ Payment:** Aggrieved Employees will be paid from the Net PAGA Payment an amount proportional to the number of workweeks he or she was employed by Defendant during the PAGA period. (Lebe Decl., ¶ 17, Exhibit 4, Section V(B) [“For purposes of distributing each Individual PAGA Payment, all distribution payments will be made according to the number of workweeks each Aggrieved Employee was employed by Defendant during the PAGA Period, with each Aggrieved Employee being entitled to a share of the Net PAGA Payment allocated to the Aggrieved Employees based upon the Aggrieved Employee’s number of workweeks employed with Defendant during the specified period as a numerator and the total number of workweeks all Aggrieved Employees were employed with by Defendant during the PAGA Period as the denominator.”].)

5) **Attorney’s Fees and Costs Are Reasonable:** Plaintiff’s counsel’s attorney fees and costs are reasonable based on his counsel’s experience and expertise in wage and hour matters. (Lebe Decl., ¶¶ 3-9.) Moreover, Plaintiff’s counsel has billed a total of 209.1 hours prosecuting this case. Plaintiff’s counsel dedicated significant resources to this case by dividing the tasks required according to skill level, the professional hours generated by each attorney are neither unreasonable nor duplicative. Multiplying the total hours billed by Plaintiff’s counsel to the litigation by their reasonable hourly rates yields a lodestar of \$100,115, which results in a 1.08 multiplier. (Lebe Decl., ¶ 24, Exhibit 6.)

6) **Tax Treatment:** Aggrieved Employees individual PAGA payments are considered penalties and will receive an IRS 1099 reflecting the settlement. (Lebe Decl., ¶ 17, Exhibit 4, Section V(C) [“The Individual PAGA Payments are considered penalties and will not be subject to local, state or federal tax withholdings. All Aggrieved Employees who cash their settlement check may receive a IRS Form 1099 reflecting this portion of the settlement.”].)

1           7)     **Disposition of Unclaimed Funds:** Aggrieved Employees will have one hundred  
2 twenty (120) days to cash or deposit their checks, or else his or her amount will be paid to the  
3 LWDA. (Lebe Decl., ¶ 17, Exhibit 4, Section V(C) [“The settlement checks issued to Aggrieved  
4 Employees shall remain valid for one hundred twenty (120) days. Thereafter, all uncashed checks  
5 shall be voided and the funds represented thereby shall be paid to the LWDA by the Settlement  
6 Administrator.”].)

7           8)     **Settlement Submitted to the Labor and Workforce Development Agency**  
8 **(“LWDA”):** On September 28, 2021, the proposed settlement was submitted to the LWDA, and  
9 on October 28, 2021, this motion and supporting papers were submitted to the LWDA. (Lebe  
10 Decl., ¶ 23, Exhibit 5.)

11           9)     **Court Retains Jurisdiction:** The proposed settlement includes a provision that  
12 the Court will retain jurisdiction to enforce the settlement pursuant to Code of Civil Procedure  
13 Section 664.6. (Lebe Decl., ¶ 17, Exhibit 4, Section VII(R) [“Pursuant to Code of Civil Procedure  
14 Section 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation,  
15 and enforcement of the terms of this Agreement and all orders and judgment entered in connection  
16 therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Superior Court  
17 for purposes of interpreting, implementing, and enforcing the Settlement embodied in this  
18 Agreement and all orders and judgments in connection therewith.”].)

19           10)    **Notice Content:** The notice to Aggrieved Employees provides (1) scope of the  
20 released claims and (2) his or her responsibility for any taxes payable on the amount received.  
21 (See Exhibit A.)

22           11)    **Aggrieved Employees’ Release:** The proposed settlement has a release that only  
23 releases civil penalties available under PAGA by reason of the facts alleged in the operative  
24 complaint. (Lebe Decl., ¶ 17, Exhibit 4, Section VI(A) [“As of the Effective Date and upon  
25 Defendant fulfilling its payment obligations under this Agreement, this settlement forever bars  
26 Plaintiff, the LWDA, and any other representative, proxy, or agent thereof, including, but not  
27 limited to, any and all Eligible Aggrieved Employees during the PAGA Period, from pursuing any  
28 action under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor

Code §§ 2698, *et seq.*, against, the Released Parties based on or arising out of alleged violations of Labor Code sections alleged in the Action, including unpaid wages, minimum wages, regular wages, overtime and double time, improper calculation of overtime and double time wages, unlawful deduction of wages, failure to provide sick leave, meal and rest breaks, failure to timely pay wages during employment, non-compliant wage statements, failure to pay wages due upon termination, failure to produce employment records, failure to reimburse for business expenses, and any other alleged violation in Plaintiff's LWDA letter."].)

12) **Plaintiff's Release:** The proposed settlement has a Civil Code section 1542 release only for Plaintiff. (Lebe Decl., ¶ 17, Exhibit 4, Section VI(B) ["As of the Effective Date and upon Defendant fulfilling its payment obligations under this Agreement, Plaintiff agrees on behalf of himself, and his respective heirs, executors, administrators, successors, agents and assigns, to release and discharge Defendant, its respective subsidiaries, affiliates, predecessors or successors in interest, or the officers, directors, shareholders, employees, attorneys, agents, assigns, insurers, re-insurers, of any of them, both individually and collectively, and any individual or entity which could be jointly liable with Defendant or any of them from any and all claims, debts, promises, agreements, actions, causes of action, suits, claims, liens, penalties, interest, demands, damages, controversies, attorneys' fees, costs of suit, losses, expenses, and liabilities (based upon any legal or equitable theory, whether contractual, common law, statutory, federal, state or otherwise) of every nature whatsoever, whether known or unknown, suspected or unsuspected, anticipated or unanticipated, filed or unfiled, arising prior to the date Plaintiff executes this Agreement, or arising out of or in connection with Plaintiff's employment with Defendant. This release includes, but is not limited to, all claims arising directly or indirectly from Plaintiff's employment; or claims or demands related to Plaintiff's performance of services, including but not limited to claims arising under federal, state or local law or cause of action, including, but not limited to, unpaid wages (straight time, overtime, bonuses, vacation, wage premiums; other wages); breach of contract; breach of the implied covenant of good faith and fair dealing; infliction of emotional harm; wrongful or retaliatory discharge; harassment, discrimination, or other violation of public policy; defamation and impairment of economic opportunity; violation of the California Fair Employment

1 and Housing Act, the California Labor Code, the California Business and Professions Code, the  
2 California Constitution; and any claims for violation of the Civil Rights Act of 1866, Title VII of  
3 the Civil Rights Act of 1964, and the Americans With Disabilities Act of 1990. Plaintiff hereby  
4 states that it is his intention in executing this Settlement Agreement that the same shall be effective  
5 as a bar to each and every claim, demand, causes of action, obligation, damage, liability, charge,  
6 attorneys' fees and costs hereinabove released. Plaintiff hereby expressly waives and relinquishes  
7 all rights and benefits, if any, arising under the provisions of Section 1542 of the Civil Code of the  
8 State of California which provides: **SECTION 1542. A general release does not extend to claims**  
9 **that the creditor or releasing party does not know or suspect to exist in his or her favor at**  
10 **the time of executing the release and that, if known by him or her, would have materially**  
11 **affect or her Settlement with the debtor or released party.** Notwithstanding the foregoing, the  
12 Released Claims shall not include any claims that cannot be released as a matter of law, including  
13 without limitation, any workers' compensation claims by Plaintiff against Defendant."].)

14  
15 DATED: October 21, 2021

LEBE LAW, APLC

16 By:   
17 Jonathan M. Lebe

18 Attorney for Plaintiff Michael Daw, on behalf of  
19 himself and all aggrieved employees  
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