

LIDMAN LAW, APC
Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Elizabeth Nguyen (SBN 238571)
enguyen@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff
JOSE LUIS TOPETE PEREZ

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
JOSE LUIS TOPETE PEREZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JOSE LUIS TOPETE PEREZ, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

PRODUCTION RESOURCE GROUP LLC, a
Delaware limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 20STCV38584 *related to* Case No.
20STCV27311

*[Assigned for all purposes to the Hon. Maren
Nelson – SSC-17]*

**PLAINTIFF'S SUPPLEMENTAL BRIEF IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: March 14, 2022
Time: 9:00 a.m.
Dept.: SSC-17

Complaint Filed: October 7, 2020

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 Plaintiff Jose Luis Topete Perez (“Plaintiff”), individually and on behalf of a class of
3 similarly situated individuals, allegedly-aggrieved employees, and the State of California as a
4 private attorney general, hereby submits this Supplemental Brief in Support of Plaintiff’s Motion
5 for Preliminary Approval of Class Action Settlement.

6 **PROCEDURAL HISTORY**

7 Plaintiff filed his Motion for Preliminary Approval of Class Action Settlement on
8 September 10, 2021, setting it for hearing on October 4, 2021. On October 1, 2021, the Court on
9 its own motion continued the hearing on Plaintiff’s Motion for Preliminary Approval of Class
10 Action Settlement to March 14, 2022 at 9:00 a.m.

11 On October 1, 2021, the Court also issued a ruling on Plaintiff’s Motion for Preliminary
12 Approval (hereinafter, the “Ruling”), identifying several issues to be addressed by the Parties with
13 supplemental briefing and an amended Settlement Agreement. Plaintiff hereby submits the
14 instant supplemental brief to address the issues identified in the Ruling.

15 **AMENDED SETTLEMENT AGREEMENT AND LWDA NOTICE**

16 In connection with addressing the issues identified in the Ruling, the Parties have amended
17 the Settlement Agreement, Class Notice, proposed Preliminary Approval Order, and proposed
18 Final Approval Order and Judgment. The following documents are being submitted concurrently
19 herewith as Exhibits to the Supplemental Declaration of Scott M. Lidman (“Supp. Lidman
20 Decl.”), as follows:

21 Attached as **Exhibit 1** to the Supp. Lidman Decl. is the redlined version of the Amended
22 Stipulation Regarding Class and Private Attorneys General Act Settlement and Release (without
23 exhibits).

24 Attached as **Exhibit 2** to the Supp. Lidman Decl. is the redlined version of the revised
25 Notice of Pendency of Class Action Settlement.

26 Attached as **Exhibit 3** to the Supp. Lidman Decl. is the redlined version of the revised
27 proposed Preliminary Approval Order.

28 Attached as **Exhibit 4** to the Supp. Lidman Decl. is the redlined version of the revised
proposed Final Approval Order and Judgment.

Attached as **Exhibit 5** to the Supp. Lidman Decl. is the final version of the Amended Stipulation Regarding Class and Private Attorneys General Act Settlement and Release with the changes accepted, all exhibits attached, and the Parties' signatures (hereafter, the Amended Settlement Agreement").

Attached as **Exhibit 6** to the Supp. Lidman Decl. is a true and correct copy of the email-generated acknowledgment of receipt from the Labor and Workforce Development Agency ("LWDA") of this Supplemental Brief as well as the final, executed Amended Settlement Agreement.

Attached as **Exhibit 7** to the Supp. Lidman Decl. is a true and correct copy of Plaintiff's July 16, 2020 letter to the LWDA.

Attached as **Exhibit 8** to the Supp. Lidman Decl. is a true and correct copy of the August 18, 2020 letter from Defendant's counsel to Plaintiff's counsel advising of the LWDA wage statement cure process that Defendant undertook.

I. ISSUES IDENTIFIED IN OCTOBER 1, 2021 COURT RULING

1. Scope of The Releases

a. Release of Class Claims

In the Ruling, the Court stated that the release of class claims should specify that it is limited to claims based on facts alleged in the operative complaint only, and the Court ordered the Parties to modify references to "the Action" in the Released Claims language of the Settlement Agreement (§ 1.3) or brief why the current language is appropriate. The Parties have complied with the Court's instruction by replacing all references to the "Action" in the definition of "Class Claims" with reference to the "operative Complaint" but have otherwise not revised the release language. *See* Supp. Lidman Decl., ¶12, Exhs. 1 and 5 (section 1.3 of the Amended Settlement Agreement). Specifically, the Parties modified the definition of "Class Claims" as follows:

1.3 "Class Claims" means any and all claims, rights, demands, liabilities, and causes of action of every nature and description, whether known or unknown, for wages, benefits, and related penalties that arose during the Class Period and were actually asserted or that could have been asserted in the [Complaint filed by the Plaintiff in the Action on October 7, 2020 \(hereinafter, the "operative](#)

1 Complaint) ~~Action by the Plaintiff~~ on behalf of himself and/or the Class Members
2 based on the facts alleged in and/or in support of Plaintiff's first cause of action
3 alleging a class claim for alleged violation of California Labor Code section 226,
4 including but not limited to claims for: (a) statutory penalties, civil penalties, and
5 damages for failure to timely provide accurate, itemized wage statements in
6 violation of California Labor Code section 226; (b) declaratory relief to determine
7 whether the wage statement practices alleged in the operative Complaint ~~Action~~ are
8 unlawful; (c) injunctive relief to halt any wage statement practices alleged in the
9 operative Complaint ~~Action~~ to be unlawful; (d) restitution and an order requiring
10 Defendant to restore and disgorge funds to each Class Member acquired by means
11 of any act or practice relating to wage statements alleged in the operative
12 Complaint ~~Action~~ to be unlawful; (e) attorneys' fees and costs incurred to prosecute
13 the Action on behalf of Class Members, including but not limited to fees incurred
14 for the services of Class Counsel or any other counsel; and (f) any other derivative
15 remedies, penalties, and interest available under the law based on the facts alleged
16 in the Action with respect to Plaintiff's wage statement allegations, including but
17 not limited to California Labor Code section 226 and the applicable Industrial
18 Welfare Commission ("IWC") Wage Order. "Class Claims" also includes all
19 claims that Plaintiff and/or Class Members may have against the Released Parties
20 relating to: (a) the payment, taxation, and allocation of attorneys' fees and costs to
21 Class Counsel pursuant to this Settlement Agreement; (b) the payment, taxation,
22 and allocation of Plaintiff's Service Award pursuant to this Settlement Agreement;
23 and (c) the payment, taxation, and allocation of payments to Class Members.

24 Supp. Lidman Decl., ¶12, Exhs. 1 and 5 (section 1.3 of the Amended Settlement
25 Agreement).

26 By limiting the definition of "Class Claims" to claims that were asserted or could have
27 been asserted "based on the facts alleged in and/or in support of Plaintiff's first cause of action
28 alleging a class claim for alleged violation of California Labor Code section 226," the Parties
have narrowly tailored the scope of the class release to relate only to claims based on the factual

1 allegations underlying Plaintiff's wage statement claim, i.e., that Defendant issued wage
2 statements that identified the employer as "PRG" rather than Production Resource Group, L.L.C.
3 Accordingly, the Parties believe that the scope of the class release in this action is consistent with
4 the Court of Appeal's directives in *Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal. App.
5 5th 521, 538 (concluding that settlement release encompassing "potential claims reasonably
6 arising out of . . . the same set of operative facts and/or theories" alleged in the complaint was
7 "sufficiently tailored" to the complaint's factual allegations; approving release of class claims
8 that are "reasonably related" to complaint's allegations).

9 b. Release of PAGA Claims

10 In its Ruling, the Court stated that the release of PAGA claims should be limited to claims
11 for penalties under PAGA as disclosed in Plaintiff's LWDA letter, or if counsel disagrees to
12 provide briefing regarding same. The Court also asked for Plaintiff to provide a copy of the
13 LWDA letter to the Court for review.

14 As explained below, the Parties believe that the release of PAGA claims should be limited
15 to claims that are included in both the LWDA letter and the operative Complaint.

16 On July 16, 2020, Plaintiff submitted his letter to the LWDA as a pre-requisite to filing
17 the instant action. A true and correct copy of Plaintiff's July 16, 2020 letter to the LWDA is
18 attached to the Supp. Lidman Decl. as Exhibit 7, filed concurrently herewith. In that letter,
19 Plaintiff notified the LWDA of two primary issues: (i) that Defendant failed to authorize and
20 permit lawful rest periods; and (ii) that Defendant failed to provide accurate wage statements in
21 violation of Labor Code section 226 because it failed to include the correct legal name of the
22 employer on wage statements. Supp. Lidman Decl., ¶10, Exh. 7.

23 After receiving the LWDA letter, on August 18, 2020, Defendant (while denying any
24 liability for wage statement violations) re-issued wage statements to its California employees
25 from and after January 1, 2019 to identify the employer as Production Resource Group, L.L.C.
26 (instead of "PRG" as appeared on earlier wage statements). Supp. Lidman Decl., ¶11, Exh. 8
27 (August 18, 2020 letter from Defendant's counsel to Plaintiff's counsel advising of the wage
28 statement cure process). As a result of Defendant's re-issuance of the wage statements, Defendant
cured the alleged wage statement violation and, pursuant to Labor Code section 2699.3(c)(2)(A),

1 Plaintiff was no longer permitted to commence any civil action for civil penalties under PAGA
2 based on the allegation that Defendant issued inaccurate wage statements by failing to include the
3 correct legal name of the employer on wage statements. Supp. Lidman Decl., ¶15, Exh. 8.

4 Due to Defendant's legal and permissible cure of the alleged wage statement violations,
5 when Plaintiff filed the operative Complaint in the instant action, Plaintiff based his second cause
6 of action under the PAGA only on the alleged rest period violations and Plaintiff was not seeking
7 any civil penalties related to the alleged wage statement violations. Supp. Lidman Decl., ¶16.

8 Based on the foregoing, the release of the PAGA claims is based only on the facts asserted
9 in support of the second cause of action in the operative Complaint, i.e., allegations that Defendant
10 failed to authorize and permit rest periods in compliance with California law. The release of
11 PAGA claims is *not* based on *all* of the facts asserted in the July 16, 2020 letter to the LWDA
12 because the LWDA letter alleged both rest period *and* wage statement violations, Plaintiff did not
13 assert a wage statement theory in support of his PAGA claim, and Plaintiff did not negotiate a
14 settlement of the alleged wage statement violations in connection with his PAGA claim. Supp.
15 Lidman Decl., ¶17.

16 Therefore, the Parties believe that the release of PAGA claims is appropriately limited to
17 the facts alleged in the second cause of action in the operative Complaint as follows (with
18 modifications reflected):

19 1.24 "PAGA Claims" means any and all claims, rights, demands, liabilities, and
20 causes of action of every nature and description, whether known or unknown, for
21 civil penalties that arose during the PAGA Period and were actually asserted or that
22 could have been asserted in the [operative Complaint and Plaintiff's July 16, 2020](#)
23 [letter to the California Labor and Workforce Development Agency](#)
24 [\("LWDA"\)](#) ~~Action~~ by the Plaintiff on behalf of himself, the State of California,
25 and/or PAGA Affected Employees based on the facts alleged in and/or in support
26 of Plaintiff's second cause of action alleging a PAGA claim for alleged violation
27 of California Labor Code sections 226.7 and 516 and the applicable IWC wage
28 order, including but not limited to claims for: (a) civil penalties pursuant to PAGA
for failure to provide rest periods or compensation in lieu thereof in violation of

1 California Labor Code sections 226.7 and 516 and the applicable IWC Wage Order;
2 (b) declaratory relief to determine whether the rest period practices alleged in the
3 operative Complaint and Plaintiff's July 16, 2020 letter to the LWDA~~Action~~ are
4 unlawful; (c) injunctive relief to halt any rest period practices alleged in the
5 operative Complaint and Plaintiff's July 16, 2020 letter to the LWDA~~Action~~ to be
6 unlawful; (d) attorneys' fees and costs incurred to prosecute the Action on behalf
7 of the State of California and PAGA Affected Employees, including but not limited
8 to fees incurred for the services of Class Counsel or any other counsel; and (e) any
9 other derivative remedies, penalties, and interest available under the law based on
10 the facts alleged in the operative Complaint and Plaintiff's July 16, 2020 letter to
11 the LWDA~~Action~~ with respect to Plaintiff's rest period allegations, including but
12 not limited to California Labor Code sections 204, 210, 226.7, 516, 558, and 1174
13 and the applicable IWC Wage Order. "PAGA Claims" also includes all claims that
14 Plaintiff, the State of California, and/or PAGA Affected Employees may have
15 against the Released Parties relating to: (a) the payment, taxation, and allocation of
16 attorneys' fees and costs to Class Counsel pursuant to this Settlement Agreement;
17 (b) the payment, taxation, and allocation of Plaintiff's Service Award pursuant to
18 this Settlement Agreement; and (c) the payment, taxation, and allocation of
19 payments to PAGA Affected Employees.

20 See Supp. Lidman Decl. ¶18, Exhs. 1 and 5.

21 The Parties believe that this PAGA release language is appropriate and properly releases
22 the PAGA-based claim that was exhausted by the July 16, 2020 letter to the LWDA and also
23 actually asserted in the operative Complaint.

24 **2. Class Data**

25 In its Ruling, the Court asked the Parties to explain whether the confidential nature of the
26 Employee List (class data) as described in Paragraphs 1.13 and 3.6.4 in the Settlement Agreement
27 will impede Class Counsel's ability to discharge their fiduciary duties to the class.

28 The confidential nature of the Class Data will not impede Class Counsel's ability to
discharge their fiduciary duties to the Class Members because although Class Counsel will not be

provided the specific, private information pertaining to each Class Member (such as their full names, last known addresses, last known telephone numbers, and social security numbers), Class Counsel will still be provided with the Class Data with specific, private identifying information redacted so that Class Counsel can review the estimated calculations and payments to be made to Class Members and ensure they are accurate. This will allow Class Counsel to properly execute their fiduciary duties to the Class Members.

Further, although Class Counsel had, prior to amending the Settlement Agreement, anticipated receiving this redacted information, the Parties have specifically included language in the Amended Settlement Agreement providing that Class Counsel will receive the redacted Employee List to ensure the accuracy of the estimated calculations and payments to be made to Class Members. *See* Supp. Lidman Decl., ¶19, Exhs. 1 and 5 (see revisions made to Section 3.6.4 of the Amended Settlement Agreement). If any particular Class Member contacts Class Counsel with questions about the accuracy of the pay period total and/or estimated settlement payment stated in the Class Member's notice, Class Counsel can obtain the Class Member's name at that time and follow up appropriately with the Settlement Administrator and counsel for Defendant. *See* Supp. Lidman Decl., ¶19.

3. Notice to Class Members

a. Procedure for Disputes

The Court noted that the Settlement Agreement and Notice did not provide a procedure for Class Members to send disputes to the Settlement Administrator as to pay periods and their estimated settlement payments. The Court ordered the Parties to revise the Settlement Agreement and Notice to provide a dispute procedure or brief why it would be proper not to include such a procedure.

The Parties have complied with the Court's instructions. Specifically, the Parties added what is now Section 3.6.6 in the Amended Settlement Agreement to specifically set forth the following procedure for Class Members to ask questions about and/or dispute the pay period count and estimated settlement payments identified in their respective notices:

3.6.6 Class Member Questions And/Or Disputes About Pay Period Totals And Estimated Payments. The Notice of Settlement will inform each Class Member of

1 the number of pay periods worked for Defendant during both the Class Period and
2 PAGA Period, and the Class Member's estimated Class Member Payment and
3 estimated PAGA Affected Employee Payment. The Notice of Settlement will also
4 inform each Class Member that if they have questions and/or disputes about the pay
5 period or estimated payment amounts, they are directed to contact the Settlement
6 Administrator and provide any evidence, documentary or otherwise, to explain why
7 they have questions or disputes. Any such question and/or dispute, including any
8 supporting documentation, must be sent to the Settlement Administrator by the
9 Response Deadline. Under such circumstances, the Settlement Administrator will
10 advise counsel for both Parties of the Class Member's question(s) and/or dispute(s),
11 and the Parties will cooperate in good faith to resolve the question(s). If a resolution
12 cannot be reached by and among the Parties and the Settlement Administrator, the
13 Court will render all final decisions on such questions and/or disputes.

14 Additionally, the Parties added what is now Section F.3 in the Notice to specifically set
15 forth the following procedure for Class Members to ask questions about and/or dispute the pay
16 period count and estimated settlement payments identified in their respective notices:

17 3. Questions/Disputes Regarding Your Pay Period Count/Estimated Payment:

18 Section D of this notice informs you of the number of pay periods worked for
19 Defendant during both the Class Period and PAGA Period, and your estimated
20 Class Member Payment and estimated PAGA Affected Employee Payment. If you
21 have questions and/or disputes about the pay period or estimated payment amounts,
22 you may contact the Settlement Administrator and provide any evidence,
23 documentary or otherwise, to explain why you have questions or disputes. Any such
24 question and/or dispute, including any supporting documentation, must be sent to
25 the Settlement Administrator by [response deadline], 2022. Under such
26 circumstances, the Settlement Administrator will advise counsel for both Parties of
27 your question(s) and/or dispute(s), and the Parties will cooperate in good faith to
28 resolve the question(s). If a resolution cannot be reached by and among the Parties

1 and the Settlement Administrator, the Court will render all final decisions on such
2 questions and/or disputes. You can mail any such questions or disputes as follow.

3 MAIL YOUR QUESTIONS/DISPUTES TO:

4 [Settlement Administrator]

5 [Address of Settlement Administrator]

6 *See Supp. Lidman Decl.*, ¶20, Exhs. 2 and 5.

7 b. Release Language to Mirror Release Language from Settlement

8 The Court instructed the Parties to ensure that the release language in the Settlement
9 Agreement matches verbatim the release language in the Notice.

10 The Parties have complied and the release language in the Settlement mirrors the release
11 language in the Notice. *See Supp. Lidman Decl.*, ¶21, Exhs. 1, 2 and 5.

12 c. Heading of Class Notice

13 The Court instructed the Parties to revise the Notice such that the first page should
14 prominently state the case number, names of the Parties, and the Court and county where the case
15 is filed and pending.

16 The Parties have complied and have prominently included such language on the first page
17 of the Notice. *See Supp. Lidman Decl.*, ¶22, Exhs. 2 and 5.

18 d. Boxes Summarizing Class Members' Options

19 The Court instructed the Parties to add before Section A of the Notice boxes summarizing
20 the Class Members' options (do nothing, request exclusion, or object) and the deadlines for
21 making such requests for exclusion or objections as appropriate. The Court also instructed that
22 the last box should contain the date, time and location of the Final Approval Hearing.

23 The Parties have complied and have added the boxes to the Notice as the Court instructed.
24 *See Supp. Lidman Decl.*, ¶23, Exhs. 2 and 5

25 e. Opt-Out Language

26 The Court instructed the Parties to revise the language in the Settlement Agreement
27 regarding opting out of the Settlement, such that no specific language or words are required.

28 The Parties have complied and have revised the language of the Settlement Agreement
and the Notice such that Class Members are now instructed that a Request for Exclusion need

only give some indication that he or she wishes to exclude himself/herself from the Settlement in the *Perez v. Production Resource Group, L.L.C.* case, or Case No. 20STCV38584, or some other descriptor that identifies the case. *See* Supp. Lidman Decl., ¶24, Exhs. 1, 2 and 5.

f. Page Numbers on Notice

The Court instructed the Parties to include page numbers on the Class Notice.

The Parties have complied and have now included page numbers. *See* Supp. Lidman Decl., ¶25, Exhs. 2 and 5.

II. SUBMISSION OF ADDITIONAL MATERIALS AND AMENDED SETTLEMENT TO LWDA

Pursuant to the Court's instructions, Plaintiff submitted the Amended Settlement Agreement as well as this Supplemental Brief to the LWDA on February 10, 2022. *See* Supp. Lidman Decl., ¶ 9, Exh. 6.

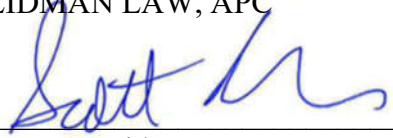
III. CONCLUSION

For the reasons discussed herein and in the Motion for Preliminary Approval, Plaintiff respectfully requests that the Court preliminarily approve the proposed Amended Settlement, provisionally certify the Settlement Class, and enter the Proposed Preliminary Approval Order submitted with these supplemental papers.

Dated: February 10, 2022

Respectfully submitted,
LIDMAN LAW, APC

By:



Scott M. Lidman
Elizabeth Nguyen
Milan Moore
Attorneys for Plaintiff
JOSE LUIS TOPETE PEREZ