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

CARMELLA JONES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

PREVAIL RESOURCES LLC, a Texas limited
liability company; F2ONSITE, business entity
form unknown; and DOES 1 through 100,

Defendants.

Case No. 20STCV29860

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

**PLAINTIFF'S SUPPLEMENTAL
BRIEFING IN SUPPORT OF
PLAINTIFF'S MOTION FOR
APPROVAL OF SETTLEMENT OF
CLAIMS BROUGHT UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT AND REASONABLE
ATTORNEYS' FEES, COSTS, AND
ENHANCEMENT AWARD**

Date: June 22, 2023
Time: 9:00 a.m.
Dept.: SSC-17

Complaint Filed: August 7, 2020
Trial Date: None Set

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

3 Plaintiff Carmella Jones (“Plaintiff”) hereby submits the following supplemental brief in
4 support of Plaintiff’s Motion for Approval of Settlement of Claims Brought Under the Private
5 Attorneys General Act and Reasonable Attorneys’ Fees, Costs, and Enhancement Payment.

6 **B. Release Is Overly Broad**

7 The Court’s March 21, 2023 Order Continuing Plaintiff’s Motion to Approve PAGA
8 Settlement (“Order”) requested that the Parties revise the Settlement Agreement in the following
9 ways: (1) revise the definition of the “PAGA Released Claims” to remove the “three Labor Code
10 sections not referenced in Plaintiff’s notice to the LWDA: Labor Code sections 210, 226.3, and
11 1197.1” (Order at 11:26-27); (2) revise the definition of the “PAGA Released Claims” to fix the
12 typographical error, specifying Labor Code section 2084, rather than 2804 (Order at 12:13-14);
13 and (3) in the “Released Parties” definition, define what “concepts” are to be released and clarify
14 whether the term “employees” includes the Aggrieved Employees in the “Released Parties”
15 definition. (Order at 10:19-21).

16 *i. Revisions to the “PAGA Released Claims.”*

17 The Parties have revised the definition of the “PAGA Released Claims” (Settlement, §
18 I.13) to remove reference to Labor Code sections 210, 226.3, and 1197.1 and to fix the
19 typographical error regarding Labor Code section 2804. The Parties have also revised the
20 Explanatory Letter, attached as Exhibit A to the Settlement Agreement, to include the revised
21 definition of the PAGA Released Claims. Attached as **Exhibit 1** to the Declaration of Paul K.
22 Haines ISO Supplemental Briefing (“Supplemental Haines Declaration”) is a true and correct
23 copy of the fully executed Amended Settlement Agreement. Attached as **Exhibit 2** to the
24 Supplemental Haines Declaration is a true and correct copy of the redlined changes to the
25 Settlement Agreement. Attached as **Exhibit 3** to the Supplemental Haines Declaration is a true
26 and correct copy of the revised Explanatory Letter. Attached as **Exhibit 4** to the Supplemental
27 Haines Declaration is a true and correct copy of the redlined changes to the Explanatory letter.

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1 ii. *Revisions to the “Released Parties.”*

2 The Parties have revised the “Released Parties” to remove the reference to “concepts” and
3 “employees.” Supplemental Haines Declaration, ¶ 2, Exhs. 1 & 2, § I.12. The Parties have also
4 revised the Explanatory Letter to include the changed definition for “Released Parties”. *Id.*, Exhs.
5 3 & 4.

6 **C. The “Incentive Award” Cannot Be Approved**

7 Given the Court’s Order denying Plaintiff’s request for a \$5,000 Enhancement Payment
8 (Order at 12:24-13:20), the Parties have revised the Settlement Agreement to remove reference to
9 the \$5,000 enhancement payment and have recalculated the Net Settlement Amount. *See*
10 Supplemental Haines Declaration, ¶ 2, Exhs. 1 & 2, §§ I.9., III.4.b. The Net Settlement Amount
11 is now \$36,929.25, which takes into account the denial of the enhancement payment as well as the
12 reduction in Plaintiff’s counsel’s costs (discussed below). *Id.*, ¶ 4. The NSA shall be distributed
13 75% (approximately \$27,696.94) to the LWDA, and 25% (approximately \$9,232.31) to Aggrieved
14 Employees, pursuant to the requirements of the PAGA as codified in Lab. Code § 2699(i). There
15 are approximately 22 Aggrieved Employees, resulting in average payments of approximately
16 \$419.65 to each Aggrieved Employee. *See* Supplemental Haines Declaration, ¶ 4.

17 **D. Attorney’s Fees and Costs**

18 The Court expressed concerns regarding Plaintiff’s counsel’s request for reimbursement
19 of costs totaling \$4,982.05. (Order at 15:2-4) Specifically, the Court requested that Plaintiff (1)
20 confirm that all costs sought were associated with litigation of the PAGA claim and (2) that
21 Plaintiff remove the \$427.97 charge for Westlaw. *Id.* Accordingly, Plaintiff has reviewed all costs
22 associated with this case and has determined that all costs were incurred in the prosecution of
23 Plaintiff’s PAGA claim, with the exception of a \$150.00 charge for jury fees.¹ Supplemental
24 Haines Declaration, ¶ 3. Excluding the \$150.00 charge for the jury fees as well as the \$427.97
25 charge for Westlaw, Plaintiff’s counsel’s costs come to \$4,404.08. *Id.*

26 _____
27 ¹ Plaintiff is requesting reimbursement for her costs in connection with Defendant’s Motion to
28 Compel Arbitration and Request for Stay of PAGA Action Pending Completion of Arbitration as
a significant part of the reason for opposing Defendant’s Motion was to avoid a stay of the PAGA
claim. Supplemental Haines Declaration, ¶ 3.

1 **F. Distribution of Net Settlement to LWDA and Aggrieved Employees.**

2 **1. Definition of “Aggrieved Employees”**

3 In response to the Court’s concerns regarding the definition of Aggrieved Employee
4 (Order at 15:23-25), Plaintiff confirms that each of the 22 employees identified by F2Onsite are
5 “aggrieved employees” under Labor Code section 2699(c) as each of F2Onsite’s employees
6 suffered at least one (1) Labor Code violation during the PAGA Period. *See* Supplemental Haines
7 Declaration, ¶ 4. This is especially true as Plaintiff alleges a direct wage statement claim, alleging
8 that the wage statements issued by F2Onsite did not contain all required information pursuant to
9 Labor Code § 226(a). *Id.*

10 **2. Administration Process**

11 In response to the Court’s concerns regarding the Explanatory Letter (Order at 17:8-10),
12 the Parties have revised the Explanatory Letter to include the following: (1) the definition of the
13 “Released Parties” and (2) included information regarding how their PAGA payment was
14 calculated as well as the number of pay periods that they worked during the PAGA Period. *See*
15 Supplemental Haines Declaration, ¶ 2, Exhs. 3 & 4.

16 The Explanatory Letter does not include a procedure to challenge the calculation of the
17 employee’s PAGA Payment as case law is clear that employee’s do not have the right to opt out
18 or object to PAGA settlements. *See Moniz v. Adecco USA, Inc.*, (2021) 72 Cal.App.5th 56, 79
19 (“PAGA provides no mechanism for aggrieved employees, including those pursuing PAGA
20 lawsuits, to be heard in objection to another PAGA settlement.”); *see also Robinson v. Southern*
21 *Counties Oil Company*, (2020) 53 Cal.App.5th 476, 482 (Finding that “there is no mechanism for
22 opting out of [a] judgment entered on [a] PAGA claim.”) This is because employees are not
23 releasing their underlying Labor Code claims but rather only the claims of the State. *See Iskanian*
24 *v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 386 (Every PAGA action is “a
25 dispute between an employer and the state.”); *Arias v. Superior Court* (2009) 46 Cal.4th 969, 980
26 (In a PAGA lawsuit, “the employee plaintiff represents the same legal right and interest as state
27 labor law enforcement agencies – namely recovery of civil penalties that otherwise would have
28 been assessed and collected by the [LWDA].”)

Moreover, because there are no due process concerns related to absent employees' release of PAGA claims, PAGA settlements are not required to have a waiting period between when employees receive their PAGA Payment and when they receive the Explanatory Letter. *See Moniz v. Adecco USA, Inc., supra*, 72 Cal.App.5th at 76 ("Class Actions and PAGA representative actions have many differences, with one salient difference being that certain due process protections afforded to unnamed class members are not part of PAGA litigation because aggrieved employees do not own personal claims for PAGA civil penalties.") Rather, employees receive the Explanatory Letter and their check at the same time, which is beneficial to the aggrieved employees on the whole. Specifically, requiring a dispute period would not be beneficial to the Aggrieved Employees as a whole as this would only (1) further delay the time for the Aggrieved Employees to receive their check as there would necessarily need to be a waiting time period for employees to dispute their workweeks and (2) cause Aggrieved Employees individual payments to further decrease in order compensate for additional administration costs. Accordingly, because the purpose of PAGA is not to benefit any individual employee but rather to serve the "interest of the public", Plaintiff submits that the notice process without a dispute period is the superior process for the aggrieved employees as a whole. *See Iskanian, supra*, 59 Cal.4th at 381 (A PAGA representative action to recover civil penalties "is fundamentally a law enforcement action designed to protect the public and not to benefit private parties.")

G. Judgement and Notice to LWDA

The Court's Order requests that Plaintiff submit a proposed Judgment that includes for dismissal of the Action. (Order at 18:3-4.) Plaintiff respectfully disagrees that a request for dismissal should be included in the proposed Judgment at this time. Instead, pursuant to California Civil Code of Civil Procedure section 664.6(a), the Parties respectfully request that the Court retain jurisdiction over this matter until the Settlement terms are executed in full. Cal. Civ. P. Code § 664.6(a) ("If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.") Accordingly, Plaintiff respectfully requests that the Court set a further hearing for Plaintiff to file a declaration

1 confirming the final distribution of funds after which the matter may be dismissed.

2 **CONCLUSION**

3 For the reasons stated herein, Plaintiff respectfully requests that this Court grant Plaintiff's
4 Motion and adopt the [Proposed] Judgment and Order Granting Settlement Approval.

5 Dated: May 30, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

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7 By:  _____

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Aggrieved Employees