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9 Leslie Dawkins

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF FRESNO

12 LESLIE DAWKINS, individually and on behalf
13 of all aggrieved employees,

14 Plaintiff,

15 v.

16 SECURE MD PROFESSIONALS –
17 CALIFORNIA, PC, and DOES 1 to 100,

18 Defendants.

) Case No. 21CECG00039

)
) PLAINTIFF’S NOTICE OF MOTION AND
) MOTION TO APPROVE THE PAGA
) SETTLEMENT; MEMORANDUM OF
) POINTS AND AUTHORITIES;
) DECLARATION OF ADAM ROSE WITH
) EXHIBIT; PROPOSED ORDER

) Date: February 17, 2022

) Time: 3:30 p.m.

) Dept: 502

19
20 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

21 Please take notice that on February 17, 2022 at 8:30 a.m. in Department 502 of the Fresno
22 County Superior Court located at 1130 O Street, Fresno, CA 93721, Plaintiff Leslie Dawkins will
23 move the Court pursuant to Labor Code section 2699(1)(2), to approve the PAGA settlement
24 reached at mediation with Michael Loeb of JAMS on September 14, 2021.

25 The motion is based on this notice, the memorandum of points and authorities, the
26 declaration of Adam Rose, pleadings on file, and arguments at the hearing.

27 Date: December 23, 2021

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28 /s/ Adam Rose

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

The case relates to Leslie Dawkins' work for Secure MD Professionals – California, PC (“SecureMD”) from April 2015 to January 2020. SecureMD is the California affiliate of a Pennsylvania based business. SecureMD professionals travel throughout the state to perform mobile endoscopy services at prisons. The nonexempt employees meet at the beginning of the workweek at a warehouse in Fresno and then spend the week traveling to assigned prison locations.

Neither Ms. Dawkins nor the aggrieved employees required vocational licenses to perform their duties; medical doctors performed the procedures, and Ms. Dawkins and the other aggrieved employees worked in support staff type roles. The days could be quite long when the backlog of people needing or requesting procedures was extensive.

Issues arose when Ms. Dawkins and the aggrieved employees were allegedly unable to take meal or rest breaks while working because the schedules were so intense that (the allegation is) breaks were essentially nonexistent. Ms. Dawkins and the aggrieved employees also allege there were issues pertaining to the need prepare patient charts and summaries after clocking out. SecureMD denies all allegations.

A PAGA letter was sent out on September 25, 2020. The case was filed on January 6, 2021. The parties agreed on mediator Michael Loeb of JAMS by the case management conference on May 13, 2021. Based on Mr. Loeb's high demand, the mediation was scheduled for September 14, 2021. In advance of the mediation, SecureMD provided the (anonymous) time records and redacted wage statements of the 21 aggrieved employees. An analysis of the data and the risks posed against the possible range of recovery are discussed below.

II. The Court is Authorized to Approve the Settlement

First, there are no set criteria to approve a PAGA settlement. PAGA is not the kind of law that serves both a remedial and deterrent purpose; the principal purpose of the PAGA is the public purpose of deterrence. (*Iskanian v. CLS Transportation of Los Angeles, LLC* (2014) 59 Cal.4th 348, 379.) The general guideline for a PAGA settlement is that it is fundamentally fair, reasonable, and

adequate with respect to the public policies underlying PAGA. (*Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 176 F.Supp.3d 930, 931.) Subsequently, the principal purpose of PAGA is deterrence. (*Iskanian*, 59 Cal.4th at 379.)

The purpose of PAGA has been fulfilled in this case, since SecureMD is now cognizant of the requirements in the Wage Orders to provide meal and rest breaks.

A. Balancing the Risks Against the Possible Range of Recovery

The records informally produced by SecureMD show a relatively high rate of turnover. It follows that collectively, all the aggrieved employees did not work the full amount of workweeks during the PAGA period, which is from September 25, 2019 through the end of May 2021 (approximately 17 months).

With the allegations of missed breaks and off the clock work, Plaintiff faced the following risks: First, SecureMD might have prevailed with an argument that breaks were effectively impossible since its employees worked in prisons where there was literally nowhere to take breaks, and that even if an employee were relieved of all duties during a break, they still would have nowhere go to take the break as prison rules strictly restrict visitor movement. A response to this position could be that it is not the employee's responsibility to determine how to take a break, but instead that breaks are made available.

Plaintiff estimated the total maximum liability of PAGA penalties for missed meal periods, assuming all 21 aggrieved employees worked through the entire PAGA period, at \$52,500. (See Lab. Code, § 558, subd. (a).) However, all the aggrieved employees did not work through the entire PAGA period. This number should be reduced at least by half given that the aggrieved employees worked roughly half this time during the PAGA period. The amount should be reduced by another half since there were many shifts when an aggrieved employee did not work more than six hours. Thus, a more realistic range of possible recovery for missed meal periods is \$13,125.

Second, for the missed rest periods, this was arguably a stronger theory. Even with nowhere to go to take breaks, the argument was that SecureMD could have made some provision to allow the aggrieved employees to rest each four hours. However, the risk is that rest periods were not

1 documented (they usually are not). Thus, Plaintiff would have to individually interview all of the
2 aggrieved employees to determine if they had similar experiences of no rest breaks as alleged.

3 Plaintiff estimated the total maximum liability of PAGA penalties for missed rest periods,
4 assuming all 21 aggrieved employees worked through the entire PAGA period, at \$105,000. (See
5 Lab. Code, § 2699, subd. (f).) However, as explained above, this number should be reduced by half
6 since all the aggrieved employees did not work through the entire PAGA period. Also, the fact that
7 not all aggrieved employees may not have similar experiences with missed breaks as Ms. Dawkins
8 should reduce the amount by another half; thus, the more realistic range of possible recovery for
9 missed rest periods is \$26,250.

10 Finally, for the off the clock work, Plaintiff estimated the total liability assuming all 21
11 aggrieved employees worked through the entire PAGA period at \$105,000. (See Lab. Code, §
12 1197.1.) Again, not all aggrieved employees worked through the entire PAGA period. Next, since
13 the work was performed off the clock, there is no reliable record of what work was performed by
14 whom (if at all). Plaintiff would be in a similar situation as with the rest periods since interviews
15 with the aggrieved employees would show whether there were similar experiences. Thus, the more
16 realistic range of recovery is \$26,250.

17 The above figures use the initial violation PAGA penalty rather than the higher subsequent
18 violation amounts, since under *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, 1209, there is
19 an argument that subsequent penalty amounts might not apply until the employer is apprised of its
20 Labor Code violations.

21 Nonetheless, based on the above, the more realistic recovery for the possible PAGA
22 penalties is \$65,625. The proposed PAGA settlement of \$20,000 represents 30% of that number,
23 and 30% is well within the range of reasonableness. Courts have concluded that ranges within 20–
24 30 percent of the estimated damages are within the range of possible approval. (See *Brown v. CVS*
25 *Pharmacy, Inc.*, No. CV 15-7631 PSG (PJWx), 2017 WL 3494297, at *4 (C.D. Cal. Apr. 24, 2017)
26 (approving settlement that represented 27 percent of possible recovery); *Glass v. UBS Fin. Servs.*,
27 *Inc.*, CV 06-4068 MMC, 2007 WL 221862, at *5 (N.D. Cal. Jan. 26, 2007) (approving a settlement
28 in overtime wage case that constituted 25 to 35 percent of the estimated actual loss to the class).)

1 Thus, Plaintiff submits that the proposed PAGA settlement is fair, reasonable, and adequate,
2 and should be approved. A discussion of the settlement terms follows.

3
4 **B. Discussion of PAGA Settlement Terms**

5 Of the gross amount of \$20,000, 40% of that amount (\$8,000) is for attorney fees, which are
6 recoverable under Labor Code section 2699, then \$4,450 is for costs. That leaves a net settlement
7 amount of \$7,550. Of that amount, 75% or \$5,662.50 will be sent to the Labor and Workforce
8 Development Agency, and 25% or \$1,887.50 will be distributed among the 21 aggrieved
9 employees on a pro rata basis. The average recovery for aggrieved employees is just under \$100,
10 which is a favorable result for both the aggrieved employees and the LWDA.

11
12 **III. Conclusion**

13 The PAGA settlement will be self-administered by SecureMD. Also, Ms. Dawkins has
14 negotiated an individual settlement that SecureMD would like to keep confidential. There is no
15 authority that requires SecureMD from disclosing the terms of the individual settlement since there
16 are no allegations of discrimination, retaliation, or harassment. (See Govt. Code, § 12964.5.)
17 Further, Plaintiff has agreed to the individual settlement. The costs between the individual case and
18 the PAGA case have been divided roughly in half (i.e., half the costs are being attributed to the
19 individual case).

20 By pursuing the PAGA portion of the case, Plaintiff has essentially provided a benefit to the
21 aggrieved employees. SecureMD has altered its policies to comply with the Wage Orders regarding
22 breaks for its employees and is keeping closer track of time worked. Thus, the case has fulfilled the
23 purpose of PAGA and the PAGA settlement, given the risks described above and the relatively low
24 number of aggrieved employees, is fair, reasonable, and adequate.

25 The PAGA settlement was reached as the result of arm's length negotiations with highly
26 experienced employment law mediator Michael Loeb at JAMS, and the parties believe the PAGA
27 settlement is a favorable result. Plaintiff respectfully requests the Court to grant the motion to
28 approve the PAGA settlement.

1 Date: December 23, 2021

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3 /s/ Adam Rose
4 Attorney for Plaintiff
5 Leslie Dawkins
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