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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

LEIGH HOERNER, individually and on behalf of
other similarly situated individuals,

Plaintiff,

v.

HOAG MEMORIAL HOSPITAL
PRESBYTERIAN; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 30-2021-01178333-CU-OE-CXC

Judge Assigned: Hon. Randall J. Sherman

Complaint Filed: 1/11/2021

**JOINT NOTICE OF MOTION AND
MOTION FOR AN ORDER APPROVING
SETTLEMENT OF ACTION BROUGHT
PURSUANT TO THE LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004; MEMORANDUM OF POINTS
AND AUTHORITIES**

*[Filed concurrently with Declaration of Michele
M. Vercoski in support thereof; [Proposed]
Order]]*

Date: October 4, 2024

Time: 10:00 AM

Dept: CX105

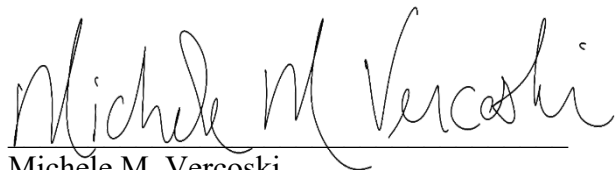
Res. No.: **74315312**

1 **PLEASE TAKE NOTICE THAT** on October 4, 2024 at 10:00 am, or as soon thereafter as the
2 matter may be heard, in Department CX105 of the above-entitled Court, located at above captioned
3 court, Plaintiff Leigh Hoerner and Defendant Hoag Memorial Hospital Presbyterian (collectively, the
4 Parties) will and hereby do jointly move for an order approving the Parties' settlement of the above-
5 captioned action pursuant to the Labor Code Private Attorneys General Act of 2004 (PAGA, Labor Code
6 2698 et seq.).

7 This joint motion is based upon this Notice of Motion and Motion, the Memorandum of Points
8 and Authorities, the PAGA Settlement Agreement, Declaration of Michele M. Vercoski, and a
9 [Proposed] Order Approving Settlement and Judgement Thereon, and all the pleadings and papers on
10 file herein.

11
12 Dated: June 11, 2024

**MCCUNE LAW GROUP, MCCUNE WRIGHT AREVALO
VERCOSKI KUSEL WECK BRANDT, APC**

13
14
15 By: 
16 Michele M. Vercoski
17 Yasmin N. Vahid
18 Attorneys for Plaintiff

19 DATED: June 11, 2024

GODES & PREIS, LLP

20
21
22 By: /s/ Richard K. Angel
23 JAMES N. GODES
24 OLIVER B. DREGER
25 RICHARD K. ANGEL
26 Attorneys for Defendant, HOAG MEMORIAL
27 HOSPITAL PRESBYTERIAN
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Leigh Hoerner and Defendant Hoag Memorial Hospital Presbyterian (collectively, the
4 Parties) jointly move this Court for an order approving the settlement of this action, on the terms set
5 forth in the Parties' PAGA Settlement Agreement. The Parties' PAGA Settlement Agreement is attached
6 as Exhibit 1 to the Declaration of Michele M. Vercoski (Vercoski Decl. ¶ 5), filed concurrently with this
7 motion.

8 This action seeks civil penalties under PAGA based on allegations that Defendant violated Labor
9 Code sections 6302(b)(2) and 6409.1. After months of contentious litigation, the Parties commenced
10 settlement negotiations and eventually reached an agreement to resolve the entire action after Defendant
11 confirmed that Plaintiff Hoerner was the only employee injured.

12 As set forth below, the Parties' Settlement is fair, reasonable, and adequate, and serves the
13 purposes of PAGA. The Settlement reflects a reasoned compromise based on this evaluation, as well as
14 the risks, uncertainties, expense, complexity, and likely duration of further litigation. Accordingly, the
15 Parties request that the Court grant this Motion, approve the Settlement, and enter judgment thereon.

16 **II. RELEVANT BACKGROUND**

17 Defendant Hoag Memorial Hospital Presbyterian ("Hoag") operates two acute-care hospitals, 13
18 urgent care centers, nine health centers, and a network of more than 1,700 physicians, 100 allied health
19 members, 6,500 employees and 2,000 volunteers. (Plaintiff's First Amended Complaint (FAC), ¶ 7.)
20 Plaintiff worked for Hoag at the Hoag Orthopedic Institute ("HOI") facility located in Irvine, California
21 as a nurse from 2010 to 2020. All of Plaintiff's Labor Code violation allegations relate to Hoag's use of
22 the OxyCide Daily Disinfectant Cleaner ("OxyCide").

23 On November 2020, pursuant to Labor Code Section 2699.3, Plaintiff gave written notice to the
24 Labor and Workforce Development Agency (LWDA) and Defendant of the provisions of the Labor
25 Code she alleged Hoag violated, and the facts and theories she claimed supported her allegations.
26 (Vercoski Decl., ¶ 3.). Plaintiff paid the required \$75 LWDA filing fee. The LWDA did not respond
27 within the 65-day notice period, and on January 11, 2021, Plaintiff filed this lawsuit. The Complaint
28

1 seeks PAGA penalties on behalf of Plaintiff and other employees at Hoag that were injured and/or made
2 ill in the scope of their employment by the use of OxyCide at the Hoag hospital facilities.

3 The Complaint generally contains causes of action under PAGA based on purported violations
4 of Labor Code sections 6302(b)(2) (Fraudulent Concealment of Injury) and § 6409.1 (Reporting
5 Requirements). Plaintiffs further allege violations of the California Code of Regulations, Title 8,
6 Sections 3380, 3383, 5141, 5144. (see FAC generally). Following a series of demurrers and
7 amendments, the sole surviving PAGA claim of the action was the claim that Hoag purportedly violated
8 Labor Code § 6409.1.

9 Thereafter, Hoag answered the Amended Complaint on February 24, 2023, denying the
10 allegations and asserting a number of defenses. As part of their investigation, the Parties engaged in
11 targeted and formal and informal discovery aimed at evaluating the strength and weaknesses of
12 Plaintiff's PAGA claim and Hoag's defenses. (Vercoski Decl. ¶ 9.) Based on the information the Parties
13 were able to give a reasoned and intelligent assessment of potential settlement. (*Ibid.*) The Parties'
14 discussions continued over several months, and eventually the Parties reached an agreement to settle the
15 entire Action.

16 **III. SUMMARY OF THE SETTLEMENT**

17 Under the Settlement, Hoag will pay into a common fund the total amount of Fifty Thousand
18 Dollars (\$50,000.00) (the Gross Settlement Amount). (See Settlement Agreement, ¶ 2.11.) Plaintiff's
19 Counsel seeks a Fee and Expense Award in the amount of \$16,500, and costs not to exceed \$2,500,
20 likewise subject to Court Approval. (*Id.*, ¶ 3.1). The remaining amount, referred to as the Net Settlement
21 Sum, will be provided to the LWDA and Plaintiff. (*Id.*).

22 Defendant agrees not to oppose Plaintiff's application for a General Release Payment of \$7,750.00,
23 which shall be for Plaintiff's efforts as representative of the PAGA Group, and in consideration of
24 Plaintiff's general release of claims. (See Settlement Agreement, ¶ 3.3.) She is the only employee who
25 claimed injury as a result of OxyCide exposure during the applicable statute of limitations, the only
26 employee whose claims Hoag failed to satisfy Labor Code § 6409.1 regarding, and therefore the only
27 employee "aggrieved" pursuant to the surviving PAGA allegation.

1 As consideration of the General Release Payment, Plaintiff is providing Hoag a full general
2 release of all claims, with a Civil Code section 1542 waiver. (*Id.*, ¶ 5.3.)

3 **IV. LEGAL STANDARD**

4 A plaintiff suing under PAGA “does so as the proxy or agent of the state’s labor law enforcement
5 agencies.” (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 986.) Accordingly, a judgment in a PAGA
6 action binds not only the Plaintiff, but also the government and nonparty aggrieved employees. (*Id.* at
7 p. 985; see also *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380.) Under PAGA,
8 a trial court must review and approve any settlement of a PAGA claim. (Lab. Code § 2699, subd. (1)(2).)
9 However, “PAGA does not establish a clear standard for evaluating PAGA settlements.” (*Patel v. Nike*
10 *Retail Services, Inc.* (N.D. Cal., May 8, 2019, No. 14-CV-04781-RS) 2019 WL 2029061, at *2.)
11 “Indeed, the LWDA has stated that ‘[t]he LWDA is not aware of any existing case law establishing a
12 specific benchmark for PAGA settlements, either on their own terms or in relation to the recovery on
13 other claims in the action.’” (*Delgado v. MarketSource, Inc.* (N.D. Cal., Aug 28, 2019, No. 17-CV-
14 07370-LHK) 2019 WL 4059850, at *3, internal citations omitted; see also *Flores v. Starwood Hotels &*
15 *Resorts Worldwide, Inc.* (C.D. Cal. 2017) 253 F.Supp.3d 1075 “[N]either of the California legislature,
16 nor the California Supreme Court, nor the California Courts of Appeal, nor the [LWDA] has provided
17 any definitive answer to this vexing question.”].)

18 Federal district courts have approved PAGA settlements if “(1) the statutory requirements set
19 forth by PAGA have been satisfied, and (2) the settlement agreement is fair, reasonable, and adequate
20 in view of PAGA’s public policy goals.” (*Patel, supra*, 2019 WL 2029061, at *2; *Jordan, supra*, 2018
21 WL 1409590, at *2 “[T]he Court will approve the PAGA settlement upon a showing that the settlement
22 terms are fundamentally fair, adequate, and reasonable in light of PAGA’s policies and purposes.”];
23 *Delgado, supra*, 2019 WL 4059850, at *3 [“Because state law enforcement agencies are the ‘real parties
24 in interest’ for PAGA claims, the Court’s task in reviewing the settlement is to ensure that the state’s
25 interest in enforcing the law is upheld.”].) PAGA’s public policy goals are “to augment the limited
26 enforcement capability of the [LDWA] by empowering employees to enforce the Labor Code as
27 representatives of the Agency.” (*Iskanian, supra*, 59 Cal.4th at p. 383.)

1 “Moreover, civil penalties recovered on the state’s behalf are intended to ‘remediate present
2 violations and deter future ones,’ *not* to redress employees’ injuries.” (*Kim v. Reins International*
3 *California, Inc.* (2020) 9 Cal.5th 73, 86, emphasis in original [quoting *Williams v. Superior Court* (2017)
4 3 Cal.5th 531, 546]; see also *Arias, supra*, 46 Cal.4th at p. 986 [“[A]n action to recover civil penalties is
5 fundamentally a law enforcement action designed to protect the public and not to benefit private parties,”
6 internal quotations and citations omitted].) Penalties recovered under PAGA are intended to further its
7 objectives, with 75 percent of penalties to be distributed to the LWDA “for enforcement of labor laws .
8 . . and for education of employers and employees about their rights and responsibilities under this
9 code[.]” (Lab. Code § 2699, subd. (i).)

10 **V. THE SETTLEMENT SHOULD BE APPROVED**

11 The parties respectfully submit that the settlement achieves the purposes of PAGA and is fair,
12 adequate, and reasonable. As explained in more detail below, the Court should approve the parties’
13 settlement because: (1) the risks of continued litigation militate in favor of approval; (2) the Settlement
14 Agreement’s remaining terms are fair and reasonable; and (3) public policy strongly favors the
15 settlement of litigation.

16 **1. Continued Litigation Risks**

17 The expense, complexity, and likely duration of further litigation favors settlement. There is
18 difficulty in proving Plaintiff’s PAGA claims, as Hoag raised numerous defenses to the theories. Based
19 on the informal and formal discovery conducted, it became evident that the facts did not support
20 Plaintiff’s allegations, as evidence showed that she was the *only* aggrieved employee during the
21 timeframe, and if Plaintiff continued the litigation, there are many specific factual and legal hurdles that
22 would result in costs and fees that are far higher than any provable damage in this case that may have
23 resulted in Plaintiff paying for fees and costs related to the dispute, should she become unsuccessful.
24 (Vercoski Decl., ¶ 10.) The settlement is a meaningful result when balanced with the risks of Plaintiff
25 being burdened with fees and costs.

26 **2. Settlement Agreement Terms are Fair and Reasonable**

27 A “strong presumption of fairness” attaches to a settlement when it is “the product of arms-length
28 negotiations between experienced and well-informed counsel.” (*Arnaud van der Gracht de*

1 *Rommerswael on Behalf of Puma Biotechnology, Inc. v. Auerbach* (C.D. Cal., Jan 7, 2019, No. SACV
2 18-00236 AG (JCGx) 2019 WL 7753447, at *3; and see *Kullar v. Foot locker Retail, Inc.* (2008) 168
3 Cal.App.4th 116, 129.) The presumption of fairness is consistent with California's public policy goal of
4 favoring settlements. (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th
5 1135, 1151; *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.) A presumption of
6 fairness exists here because the Settlement was negotiated by counsels with experience in PAGA actions
7 and was negotiated after conducting sufficient discovery and investigation into the strength, weaknesses,
8 and potential value of the PAGA claims, as well as evaluating the risks of litigating the claim through
9 trial (Vercoski Decl., ¶ 12.)

10 **3. Public Policy Favors Settlement**

11 Public Policy strongly favors the settlement of litigation. *Consumer Advocacy Group v. Kintetsu*,
12 *supra*, 141 Cal.App.4th at 63. Because the proposed settlement is neither unjust nor ignores the public
13 interest, it should be approved. *Id.*

14 **VI. APPROVAL OF PLAINTIFF'S COUNSEL'S ATTORNEY'S FEES & GENERAL** 15 **RELEASE TO PLAINTIFF**

16 Plaintiff's counsel seeks attorneys' fees of \$16,500.00 (33% of the Gross Settlement Amount),
17 and costs and fees not to exceed \$2,500.00, subject to the Court's approval. (Vercoski Decl., ¶ 5.)
18 Plaintiff's counsel contends these amounts are reasonable and appropriate. Any amount not awarded in
19 attorneys' fees or costs to Plaintiff's counsel will be included in the Net Settlement Sum distributed to
20 the LWDA and PAGA Group Member.

21 Pursuant to the terms of the Settlement, Plaintiff seeks a General Release Payment of \$7,750.00,
22 subject to Court approval, which shall be for Plaintiff's efforts and time as the representative in this
23 PAGA action and Plaintiff's individual nominal damages in consideration for Plaintiff's general release
24 of all claims against Hoag. (See Settlement Agreement, ¶ 3.3.) The General Release Payment is, in part,
25 consideration for this broad general release from Plaintiff. (Vercoski Decl., ¶ 13.) Any amount not
26 awarded to the General Release Payment will be included in the Net Settlement Sum distributed to the
27 LWDA and PAGA Group Member. (*Id.*)

The Parties' proposed Settlement is fair, adequate, reasonable, and in the best interests of the State of California and the Parties, including the PAGA Group Members. For all the foregoing reasons, the Parties respectfully request that the Court approve the Settlement and order that the Parties' Settlement Agreement be carried out according to its terms.

**MCCUNE LAW GROUP, MCCUNE WRIGHT AREVALO
VERCOSKI KUSEL WECK BRANDT, APC**

Michele M. Vercoski
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OLIVER B. DREGER
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HOSPITAL PRESBYTERIAN

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA

3 COUNTY OF ORANGE

4 I am employed in the County of Orange, California. I am over the age of 18 years and not a
5 party to the within action; my business address is 18565 Jamboree Rd., Suite 550
Irvine, CA 92612

6 On June 11, 2024, I served the foregoing document described as **JOINT NOTICE OF**
7 **MOTION AND MOTION FOR AN ORDER APPROVING SETTLEMENT OF ACTION**
8 **BROUGHT PURSUANT TO THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT**
9 **OF 2004; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties through
their respective attorneys of record in this action, by placing a ☒ true copy or ☐ original thereof
enclosed in sealed envelopes addressed as follows:

10 **GODES & PREIS, LLP**

11 James N. Godes (SBN 132183)

12 Oliver B. Dreger (SBN 261351)

13 Richard K. Angel (SBN 339028)

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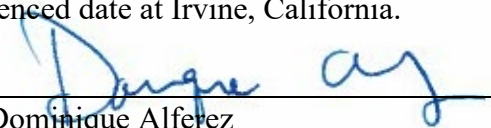
17 rangel@gaplegal.com

Attorneys for Defendant, HOAG MEMORIAL HOSPITAL PRESBYTERIAN

18
19 **METHOD OF SERVICE PURSUANT TO CCP SECTION 1013:**

20 [x] **(BY ELECTRONIC MAIL)** By electronically mailing a true and correct copy through
21 McCune Law Group Electronic Mail System from da@mccunewright.com to the Email Address(es)
22 noted above per Code of Civil Procedure, Section 1010.6 or an agreement by the parties to accept
23 service by Email. I did not receive, within a reasonable time after transmission, any electronic
message that the Email transmission(s) were unsuccessful.

24 I declare under penalty of perjury under the laws of the State of California that the above is
25 true and correct. Executed on the above-referenced date at Irvine, California.

26 
Dominique Alferez