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Attorneys for Plaintiff Marisa Silva, on behalf of herself and all "aggrieved employees" pursuant to Labor Code § 2698 *et seq.*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MERCED**

MARISA SILVA, on behalf of herself and
all "aggrieved employees" pursuant to
Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

RETAIL SERVICES WIS CORP., a
Delaware corporation, LAWRENCE
SERVICE LLC, a Delaware limited
liability company, and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 21CV-01346

Assigned to the Hon. Brian McCabe, Dept. 8

**STIPULATION AND ~~PROPOSED~~ ORDER
APPROVING SETTLEMENT OF PRIVATE
ATTORNEYS GENERAL ACT CLAIMS,
DISMISSING ACTION WITH PREJUDICE,
AND ENTERING JUDGMENT THEREON**

Action Filed: April 21, 2021

FAC Filed: June 25, 2021

STIPULATION

IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. On February 11, 2021, Plaintiff Marisa Silva ("Silva") transmitted a letter to the California Labor & Workforce Development Agency ("LWDA") and Defendant Retail Services WIS Corp ("Defendant") in compliance with the exhaustion requirements of the California Labor Code Private Attorneys General Act ("PAGA"), articulating claims related to the failure to properly compute bonus wages and other non-base hourly wages into the regular rate of pay for purposes of paying overtime at the correct rates, failure to pay premium wages for missed rest and meal breaks, failure to reimburse all business-related expenses, failure to issue accurate wage statements, and failure to pay all wages due at the separation of employment. See Declaration of Daniel F. Gaines ("Gaines Decl.") at ¶ 6; Exhibit "B" to Gaines Decl.

2. On April 20, 2021, Silva transmitted a second letter to the LWDA and Defendant to include claims against an additional Defendant, Lawrence Service LLC. Gaines Decl. at ¶ 7; Exhibit "C" to Gaines Decl.).

3. On April 21, 2021, Silva filed a Representative Action Complaint in the Superior Court of the State of California for the County of Merced, entitled *Marisa Silva, et al. v. Retail Services Wis Corp., a Delaware corporation, et al.*, case number 21CV-01346. Silva filed her Complaint on behalf of the State of California and other aggrieved employees as a PAGA action based on violations of Labor Code §§ 201, 202, 226(a), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194 and 2802. Gaines Decl. at ¶ 8.

4. Plaintiff filed a First Amended Complaint (the "Silva Complaint") on June 25, 2021, which added Lawrence Service LLC, a Delaware limited liability company, as an additional Defendant. After ascertaining that this was not a proper defendant, Lawrence Service LLC was dismissed from the Action on or about July 14, 2021. Gaines Decl. at ¶ 9; Exhibits "D" to Gaines Decl.

5. On July 3, 2018, Plaintiffs Christina Celia Perez ("Perez") and Stephanie Studebaker ("Studebaker") transmitted a letter to the LWDA and Defendant in compliance with the exhaustion

requirements of PAGA, articulating claims related to unpaid wages, meal periods, rest periods, itemized wage statements, failure to reimburse expenses, and failure to timely pay wages at separation. See Declaration of Gregory Mauro ("Mauro Decl.") at ¶ 2; Exhibit "A" to Mauro Decl.

6. On September 12, 2018, Plaintiffs Perez and Studebaker filed a Representative Action Complaint in the San Diego County Superior Court, *Perez, et al. v. Retail Services WIS Corporation, et al.*, case number 37-2018-00045996-CU-OE-CTL (the "Perez Complaint"). The Perez Complaint was filed on behalf of the State of California and on behalf of the general public as a PAGA action based on violations of Labor Code §§ 201, 202, 203, 226, 226.7, 510, 512, 558, 1174.5, 1194, 1197, 1198 and 2802. Mauro Decl. at ¶ 3.

7. Defendant disputes and denies the allegations and claims asserted in the Perez Complaint and the Silva Complaint (collectively "the Complaints"), Perez and Studebaker's July 3, 2018 notice to the LWDA, and Silva's February 11, 2021 and April 20, 2021 notices to the LWDA. It was also Defendant's position that Plaintiffs could not maintain their PAGA Complaints because there is no evidence of a common policy or practice that makes a trial manageable. Gaines Decl. at ¶ 10.

8. During the course of the litigation, Plaintiffs Silva, Perez, and Studebaker (collectively "Plaintiffs") and Defendant (hereinafter, Plaintiffs and Defendants are collectively referred to as the "Parties") engaged in formal and informal discovery and fully shared the information necessary for all sides to conduct a legitimate investigation into the allegations of the action and potential defenses thereto. The Parties have reached this settlement only after discovery and investigation was performed. Gaines Decl. at ¶ 11.

9. Being fully apprised of the value and strength of Plaintiffs' claims, counsel for Plaintiffs and Defendant successfully negotiated a settlement of Plaintiffs' claims asserted in the action through arm's-length negotiations assisted by mediator Lisa Klerman, Esq.; the terms and conditions of the settlement are set forth in the Private Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement Agreement ("Settlement" or "Settlement Agreement"). Gaines Decl. at ¶ 12; Exhibit "E" to Gaines Decl. The Settlement Agreement resolves all claims asserted in the

Complaints and contemplates that both Complaints will be dismissed with prejudice in exchange for the consideration set out in the Settlement Agreement.

10. Counsel for Plaintiffs and Defendant also considered the fact that the existence of numerous disputes of fact in this case make the outcome uncertain. In the estimation of counsel for the Parties, the delay, inconvenience, distraction, and uncertainty imposed by the litigation demands would far outweigh the potential benefits of additional litigation. Gaines Decl. at ¶ 13.

11. Based on the information and documents obtained through both formal and informal discovery, Plaintiffs assessed the maximum value of the limited PAGA claims to be released by the settlement to be approximately \$22,663,100 (at the rate of a \$100.00 penalty for approximately 226,631 pay periods at issue for approximately 6,500 Aggrieved Employees). Gaines Decl. at ¶ 14.

12. Plaintiffs' Counsel also took into account that even if Plaintiffs prevailed on the merits of the PAGA claim, Defendant could persuasively argue that the Court should exercise its discretion, under Labor Code § 2699(e), to reduce the amount of civil penalties assessed. Gaines Decl. at ¶ 15. A court in a PAGA action has the same discretion "to assess a civil penalty" that the Labor Commissioner would have, as well as complete discretion to "award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." And indeed, it is common for courts to reduce the penalties. *See e.g., Ghrdilyan v. RJ Financial, et al.*, Los Angeles Superior Court, Case No. BC430633 (94% reduction); *Parr v. Golden State Overnight Delivery Service, Inc.*, Alameda County Superior Court, Case No. RG12-618103 (94% reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011) (82% reduction); *Gola v. University of San Francisco*, Case No. CGC-18-565018 (Sup. Ct. Decision dates July 21, 2020) (85% reduction of PAGA penalties).

13. As set forth in the Settlement Agreement, the amount of the Settlement Sum is \$2,420,000, or approximately 11% of the maximum recoverable penalties, and includes an apportionment of attorneys' fees and costs, payment to the settlement administrator, and a general

1 release payment/enhancement award to each Plaintiff. Gaines Decl. at ¶ 16; Exhibit "E" to the
2 Gaines Decl.

3 14. Based on their extensive experience litigating over 100 representative actions,
4 counsel for Plaintiffs believe the settlement here is fair and reasonable and warrants approval by
5 the Court. Gaines Decl. at ¶¶ 2-5; Exhibit "A" to Gaines Decl.; Mauro Decl. at ¶¶ 8-13.

6 15. The Parties agree that upon entry of the Order approving this settlement, Plaintiffs
7 and all Aggrieved Employees, as defined in the Settlement Agreement will be forever barred from
8 pursuing against Defendant, and any of the Released Parties, as defined in the Settlement
9 Agreement, all claims for PAGA civil penalties that were alleged in the Complaints, including but
10 not limited to unpaid minimum and overtime wages, failure to provide meal periods, failure to
11 provide rest periods, failure to issue accurate and complete wage statements, failure to reimburse
12 expenses, failure to keep accurate records, and failure to timely pay wages at separation (including
13 but not limited to alleged violations of Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 510,
14 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802 and applicable provisions of the Wage Orders) or
15 that could have been alleged in the Complaints based on the facts alleged in the Complaints; that
16 arose from September 12, 2018 through November 25, 2021, and all claims that Plaintiffs or the
17 Aggrieved Employees may have against the Released Parties relating to the payment, taxation, and
18 allocation of attorney's fees and costs to Plaintiffs' Counsel.

19 16. The Parties agree that this stipulation should be sufficient for purposes of approving
20 the PAGA Settlement of the Complaints as set out in the Settlement Agreement pursuant to the
21 requirements set out in Labor Code section 2699(1)(2).

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17. The Parties request that the Court enter the accompanying order, approving the Settlement (attached to the Gaines Declaration as Exhibit "E"), as permitted by Labor Code § 2699(l), and entering Judgment in accordance with the terms and conditions of the Settlement Agreement. (Gaines Decl. at ¶ 18).

IT IS SO STIPULATED.

ATTORNEYS FOR PLAINTIFFS:

Dated: January 31, 2022

Respectfully submitted,
GAINES & GAINES
A Professional Law Corporation

By: Daniel F. Gaines
Daniel F. Gaines
Alex P. Katofsky

Dated: January 31, 2022

JAMES HAWKINS
A Professional Law Corporation

By: [Signature]
James R. Hawkins
Gregory Mauro

ATTORNEYS FOR DEFENDANT:

Dated: ^{Feb}January 1, 2022

LITTLER MENDELSON, P.C.

By: [Signature]
Jody A. Landry

ORDER AND JUDGMENT

The Court, having reviewed the Parties' the Private Attorneys General Act (Labor Code § 2698 *et seq.*) ("PAGA") Settlement Agreement (the "Settlement" or "Settlement Agreement") attached as Exhibit "E" to the concurrently-filed Declaration of Daniel F. Gaines, together with the Stipulation of the Parties and the Declarations of Daniel F. Gaines and Gregory Mauro and exhibits attached thereto, hereby ORDERS AND ADJUDGES:

1. This Order and Judgment hereby incorporates by reference the definitions of the Settlement Agreement as though fully set forth herein, and all terms used herein shall have the same meaning as set forth in the Settlement Agreement.

2. The Court finds the Settlement was entered into in good faith, that the settlement is fair, reasonable and adequate, and that the settlement satisfies the standards and applicable requirements for approval of PAGA representative actions under California law.

3. The Court approves the penalties to be paid to the Aggrieved Employees and the State of California as set forth in the Settlement, pursuant to Labor Code § 2699(l). The Court further approves all payments to be made to Plaintiffs' counsel, Plaintiffs, and the Settlement Administrator, based on the terms of the Settlement. The Court approves ILYM Group, Inc. to act as the Settlement Administrator for purposes of administering the settlement.

4. The Settlement Agreement is not an admission of wrongdoing by Defendant, nor is this Order a finding of the validity of any allegations of any wrongdoing by Defendant. Neither this Order and Judgment, the Stipulation to approve the settlement, nor any document referred to therein, nor any action taken to carry out the terms of the Settlement Agreement, may be construed as, or may be used as, an admission of any fault, wrongdoing, admission, concession, or liability whatsoever by or against Defendant;

5. Upon entry of this Order and Judgment, the Parties and the Settlement Administrator shall effectuate all terms of the Settlement based on the provisions and timelines set forth in the Settlement Agreement.

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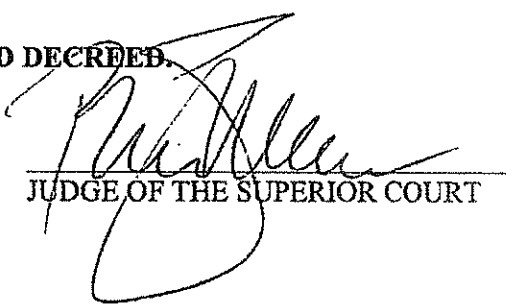
6. The Court further orders, adjudges, and decrees that Plaintiffs shall, for the PAGA Period (defined as September 12, 2018 through November 25, 2021), fully release and forever discharge Defendant and the Released Parties from any and all Released Claims, as defined in the Settlement Agreement, attached to the Declaration of Daniel F. Gaines.

7. Judgment is hereby entered in accordance with the Settlement Agreement and the lawsuit is dismissed with prejudice.

8. Plaintiffs shall promptly submit a copy of this Order and Judgment to the LWDA pursuant to PAGA.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: FEB 09 2022


JUDGE OF THE SUPERIOR COURT

PROOF OF SERVICE AND CERTIFICATION

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 27200 Agoura Road, Suite 101, Calabasas, CA 91301

____ (For messenger) my business address is:

On February 1, 2022, I served the foregoing document described (1) STIPULATION AND [PROPOSED] ORDER APPROVING SETTLEMENT OF PRIVATE ATTORNEYS GENERAL ACT CLAIMS, DISMISSING ACTION WITH PREJUDICE, AND ENTERING JUDGMENT THEREON, (2) DECLARATION OF DANIEL F. GAINES IN SUPPORT OF STIPULATION AND [PROPOSED] ORDER APPROVING SETTLEMENT OF PRIVATE ATTORNEYS GENERAL ACT CLAIMS, DISMISSING ACTION WITH PREJUDICE, AND ENTERING JUDGMENT THEREON and (3) DECLARATION OF GREGORY MAURO IN SUPPORT OF STIPULATION AND [PROPOSED] ORDER APPROVING SETTLEMENT OF PRIVATE ATTORNEYS GENERAL ACT CLAIMS, DISMISSING ACTION WITH PREJUDICE, AND ENTERING JUDGMENT THEREON on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Jody Landry, Esq. LITTLER MENDELSON, P.C. 501 W. Broadway, Suite 900 San Diego, CA 92101 Attorneys for Defendant Retail Services WIS Corp.	James R. Hawkins, Esq. Gregory Mauro, Esq. JAMES HAWKINS APLC 9880 Research Drive, Suite 200 Irvine, CA 92618 Attorneys for Plaintiffs Christina Perez and Stephanie Studebaker
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☒ (BY ☒ U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with United States postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

____ (BY FACSIMILE TRANSMISSION) On _____, at _____, at Calabasas, California, I served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was (818)703-8984 and the telephone number(s) of the receiving facsimile machine was (916) 920-4402. A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as complete and without error. Copies of the facsimile transmission cover sheet and the transmission report are attached to this proof of service.

☒ (UPLOADED TO LWDA WEB PORTAL) I caused the above-described document to be delivered to the Labor & Workforce Development Agency via online process at the PAGA Filing website (www.dir.ca.gov) in accordance with the procedure imposed by the LWDA.

I certify that the above document was printed on recycled paper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 1, 2022, at Calabasas, California.

Amelia Booth
AMELIA BOOTH