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

KAYLA BEREAL-MURRAY, individually
and on behalf of all others similarly
situated,

Plaintiff,

vs.

FIVE ACRES – THE BOYS’ AND
GIRLS’ AID SOCIETY OF LOS
ANGELES COUNTY; and DOES 1
through 20, inclusive,

Defendants.

Case No. 21STCV20832

*Assigned for all purposes to
Hon. Judge Stuart M. Rice
Dept. 1*

**PLAINTIFF KAYLA BEREAL-MURRAY
SUPPLEMENTAL SUBMISSION IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: April 6, 2023
Time: 10:30 a.m.
Dept.: 1

Plaintiff Kayla Bereal-Murray by and through her attorneys of record, hereby submit
Plaintiff’s Supplemental Briefing in Support of Plaintiff’s Motion for Preliminary Approval of
Class and Representative Action Settlement (“Supplemental Briefing”).

On February 23, 2023, Plaintiff, through her attorneys of record, filed a Motion for
Preliminary Approval of Class and Representative Action Settlement and related papers (“MPA

1 filings”). The hearing on Plaintiff’s MPA filings was originally set for March 1, 2023
2 (“Preliminary Approval Hearing”). On January 18, 2023, the Court, on its own motion, issued
3 an Order continuing the Preliminary Approval Hearing to April 6, 2023 at 10:30 a.m. in
4 Department 1 and requested additional information via a Checklist for Preliminary Approval of
5 Class Action Settlement (“the Checklist”) regarding data sampling used during investigation,
6 Plaintiff’s adequacy to be class representative, and specific revisions to the Parties’ Class
7 Action and PAGA Settlement Agreement. Plaintiff hereby supplement her January 18, 2023
8 MPA filings, and address the Court’s concerns from its February 28, 2023 Order and Checklist
9 as follows:

10 **MOVING PAPERS**

- 11 **1. Dunk/Kullar Analysis – Provide a further, more detailed summary of the**
12 **investigation and discovery conducted, including the specific documents**
13 **reviewed prior to agreeing to settle the case. (*Dunk v. Ford Motor Co.* (1996) 48**
14 **Cal.App.4th 1794, 1802, as modified Sept. 30, 1996 (*Dunk*).) If counsel's**
15 **analysis was informed by a data sample, show that the sample is statistically**
16 **reliable.**

17 Plaintiff provides supplemental briefing as follows:

18 Through informal discovery, Plaintiff requested certain information and documents
19 related to, *inter alia*, class contact information, the number of Class Members, Class Members
20 hire and termination dates, Class Member final hourly rates, total number of weeks and shifts
21 worked by Class Members, policy documents, Class Members time records, and Class Members
22 pay records. Supplemental Declaration of Steven A. McNicholl in Support of Plaintiff Kayla
23 Bereal-Murray’s Supplemental Submission in Support of Motion for Preliminary Approval of
24 Class Action Settlement (“Decl. McNicholl”), ¶ 6. Defendant produced 1000’s of documents and
25 information, including Plaintiff’s personnel file, policy documents, employment dates, and an
26 approximate sampling of 10% of the employee handbooks, time punches and pay records for all
27 residential treatment counselors and crisis intervention specialists that worked at the Defendant’s
28

1 locations that covered a period of over 5 years of the class period. *Id.* Defendant also produced its
2 financial documents. *Id.* Plaintiff's expert analyzed all the time and pay records and calculated
3 damages. *Id.*

4 The sample was randomly selected by using a list of unique employee ID numbers and
5 the employee's respective location. *Id.* at ¶ 7. A random number was assigned to each employee
6 and a random number generator was used to select the sample. *Id.* Given the sample was
7 randomly selected, and did not include Plaintiff, there was no selection bias. *Id.* Further the
8 calculations provided by Plaintiff's expert show low variability and margin of error. For
9 example, the time records show 87.9% of shifts were 6 or more hours in length, with few
10 outliers. *Id.* Given the sample was randomly selected, there was no selection bias, there was low
11 variability and margin of error the sampling provided by Defendant is statistically significant.
12 *See Duran v. U.S. Bank National Assn.*, 59 Cal.4th 1 (Cal., 2014) (the court found an analysis to
13 determine if a sample size is statistically appropriate can include ensuring that the sample is
14 randomly selected, evaluating the extent of variability within the sample, that there is no
15 selection bias, and a large margin of error is improper).

16 In addition, Defendant produced arbitration agreements purported to be signed by class
17 members. Had Defendant decided to compel arbitration and succeed, the class claims could
18 have potentially been eliminated entirely. ¶ 8.

19 **2. Adequacy – Provide evidence that each proposed class representative has**
20 **agreed to act as same and understands his or her responsibilities. (See**
21 ***Soderstedt v. CBIZ Southern California, LLC* (2011) 197 Cal.App.4th 133, 155-156;**
22 ***Jones v. Farmers Ins. Exchange* (2013) 221 Cal.App.4th 986, 998-999).**

23 Plaintiff provides supplemental briefing as follows:

24 Plaintiff has executed a declaration regarding her adequacy as a class representative. Decl.
25 McNicholl, ¶ 10. A true and correct copy of Plaintiff Bereal-Murray's Declaration in support of
26 Plaintiff's Supplemental Submission in Support of Motion for Preliminary Approval is attached
27 hereto as **Exhibit 7**.

SETTLEMENT AGREEMENT

3. Release of Claims – Scope: The scope of any release given by class members must be defined with precision and clarity. Any released claims not presented directly in the operative complaint should be based on the facts alleged in the operative complaint. (*See Amaro v. Anaheim Arena Mgmt.* (2021) 69 Cal. App. 5th 521, 537 and FN. 5; *Uribe v. Crown Building Maintenance Co.* 70 Cal. App. 5th 986, 1005.)

- The releases in ¶ 24 are overbroad. Class Members should only release claims alleged in the operative complaint or that could have been alleged in the operative complaint based on the facts actually alleged in the operative complaint. Class Members should not release any claims for PAGA penalties or those found in the PAGA Notice.

Plaintiff provides supplemental briefing as follows:

Plaintiff, via her attorneys of record, have corrected the Settlement Agreement and the Class Notice to be consistent with what was outlined above. Decl. McNicholl, ¶ 12. A true and correct copy of the redlined settlement agreement that reflects these changes in ¶ 24 is attached hereto as **Exhibit 1**. A true and correct copy of the fully executed and revised Class Action and PAGA Settlement Agreement is attached hereto as **Exhibit 2**.

4. Release of Claims – Class cases which include a PAGA claim should have a separate release for the PAGA claim tied to the facts alleged in the notice given to the LWDA.

Plaintiff provides supplemental briefing as follows:

Plaintiff, via her attorneys of record, have corrected the settlement agreement to be consistent with what was outlined above. Decl. McNicholl, ¶ 14. A true *and* correct copy of the redlined settlement agreement that reflects these changes in ¶ 25 is attached hereto as **Exhibit 1**. A true and correct copy of the fully executed and revised Class Action and PAGA Settlement

Agreement is attached hereto as **Exhibit 2**.

5. Notice Administration – Indicate whether the list will be updated by the administrator prior to the initial mailing by use of National Change of Address Registry.

Plaintiff provides supplemental briefing as follows:

Plaintiff, via her attorneys of record, have corrected the settlement agreement to be consistent with what was outlined above. Decl. McNicholl, ¶ 16. A true and correct copy of the redlined settlement agreement that reflects these changes in ¶ 55(b) is attached hereto as **Exhibit 1**. A true and correct copy of the fully executed and revised Class Action and PAGA Settlement Agreement is attached hereto as **Exhibit 2**.

6. Responses to Notice – Indicate the deadline to submit objections, requests for exclusion, claim form (if applicable), and/or disputes to workweeks. Confirm the deadline is reasonable. The Notice Deadline definition ¶ 12 does not actually have a day deadline. Paragraph 56. A states that Class Members may seek exclusion from the settlement 60 calendar days after the initial mailing of the Class Notice, but does not state that this is the “Notice Deadline” or that this timing applies to objections and disputes. Revise accordingly.

Plaintiff provides supplemental briefing as follows:

Plaintiff, via her attorneys of record, have corrected the settlement agreement to be consistent with what was outlined above. Decl. McNicholl, ¶ 18. A true and correct copy of the redlined settlement agreement that reflects these changes in ¶ 13 and 55(b) is attached hereto as **Exhibit 1**. A true and correct copy of the fully executed and revised Class Action and PAGA Settlement Agreement is attached hereto as **Exhibit 2**.

EXHIBITS TO THE MOTION

7. Exhibits to the Motion – All exhibits should be bookmarked, as set forth in the Presiding Judge’s First Amended General Order of May 3, 2019 re:

Electronic Filing, available on the Court website. Ensure that all filings are properly filed so that they are text searchable.

Plaintiff provides supplemental briefing as follows:

Plaintiff, via her attorneys of record, has complied with this requirement. Decl. McNicholl, ¶ 20.

Dated: March 23, 2023

AEGIS LAW FIRM, PC

By: Steven McNicholl
Steven A. McNicholl
Attorneys for Plaintiff