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 Department of Industrial Relations
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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

RUTHIE BRASWELL, on behalf of) Case No.: 2:21-cv-09959-MWF-AGR
 herself, the State of California, and)
 others similarly situated and aggrieved,)

Plaintiffs,) **COMMENTS OF LWDA RE:**
) **PROPOSED SETTLEMENT**

vs.)

AHMC SAN GABRIEL VALLEY)
 MEDICAL CENTER, LP, a California) Date: November 19, 2024
 limited partnership; AHMC) Time: 3:00 p.m.
 HEALTHCARE, INC., a California) Courtroom: 5A
 corporation; AHMC ANAHEIM) Judge: Hon. Michael W. Fitzgerald
 REGIONAL MEDICAL CENTER LP,)
 a California limited partnership; AHMC)
 SETON MEDICAL CENTER LLC, a)
 California limited partnership; AMHC)
 MONTEREY PARK HOSPITAL LP; a)
 California limited partnership; AHMC)
 GARFIELD MEDICAL CENTER LP, a)
 California, limited partnership; and)
 AHMC WHITTIER HOSPITAL)
 MEDICAL CENTER LP, a California)
 limited partnership,)

Defendants.)

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1 **I. Introduction**

2 The California Labor and Workforce Development Agency (“LWDA”),
3 through the Division of Labor Standards Enforcement (“the Labor Commissioner”)
4 submits these comments with regard to the proposed settlement between Plaintiff
5 Ruthie Braswell and Defendants. LWDA is the real party in interest in a PAGA claim,
6 and it is bound by PAGA judgments. *Arias v. Superior Court* (2009) 46 Cal.4th 969,
7 986. The Court should reject the settlement because Plaintiff has failed to (1) exhaust
8 several PAGA claims she purports to settle, (2) justify the discount from the potential
9 recovery, or (3) provide sufficient information regarding the valuation of several
10 PAGA claims she purports to settle. In addition, the Labor Commissioner has
11 commenced an investigation of the non-exhausted allegations added by Braswell’s
12 September 12, 2024 amended PAGA notice, preventing any actions on the allegations
13 which are newly included in that notice.

14 **II. Plaintiff Has Failed to Exhaust Several Claims She Purports to Settle,**
15 **Including All Claims Raised for the First Time in her September 12, 2024 PAGA**
16 **Notice and the *Ramirez* Meal Period Claim.**

17 Before bringing a PAGA claim, an aggrieved employee must first exhaust the
18 requirements of PAGA contained in Labor Code § 2699.3,¹ which include providing
19 notice to the employer and LWDA “of the specific provisions of [the Labor Code]
20 alleged to have been violated, including the facts and theories to support the alleged
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27 ¹All further statutory references will be to the California Labor Code unless otherwise
28 stated.

violation.” Sections 2699.3(a)(1)(A), (c)(1)(A). To allow LWDA the opportunity to investigate claims, a plaintiff cannot commence a civil action to recover civil penalties for claims alleged in a PAGA notice until at least 65 days after providing notice to LWDA. Section 2699.3(a)(2)(A), (c)(1)(D)²; *Williams v. Superior Court* (2017) 3 Cal.5th 531, 545-46 (PAGA’s notice requirement “afford[s] the [LWDA] the opportunity to decide whether to allocate scarce resources to an investigation, a decision better made with knowledge of the allegations an aggrieved employee is making and any basis for those allegations”).

A. Failure to Exhaust PAGA Prefiling Requirements for New Allegations and LWDA Investigation Blocking Plaintiff from Proceeding on New Allegations in September 12, 2024 PAGA Notice.

Plaintiff Braswell filed an amended PAGA notice with LWDA on September 12, 2024. The new allegations in the amended notice include claims under sections 204, 551, 552, and 2800. Cf. Bollinger Declaration (Dkt. #51), Ex. A, pp. 3, 11-13 and Jacka Declaration, Ex. A pp. 3, 11-13. On November 11, 2024—within the statutory 65-day period—LWDA timely issued to the parties a Notice of Investigation regarding Plaintiff Braswell’s amended PAGA notice. *See* § 2699.3(a)(2)(B); Jacka Decl., Ex. B (Notice of Commencement of Investigation). Accordingly, claims asserted in Plaintiff Braswell’s amended PAGA notice now are subject to LWDA’s

² This latter provision is applicable to employers with 100 or more employees for “curable” violations (those not listed in § 2699.5) other than wage statement violations.

1 jurisdiction. Plaintiff thus cannot pursue them in any civil action while LWDA's
2 investigation remains pending.

3
4 Following issuance of LWDA's notice to the parties it is investigating the
5 claims alleged in Plaintiff Braswell's amended PAGA notice, LWDA has 120 days to
6 conduct such investigation and issue any appropriate citation. Only after expiration of
7 this investigation period—and even then only in the event LWDA does not cite or sue
8 the employer—may Plaintiff pursue civil penalties for such claims on behalf of the
9 state. *See* § 2699.3(a)(2)(B). Accordingly, Plaintiff Braswell's attempt to pursue such
10 claims, let alone negotiate a settlement regarding them, must be rejected.
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13 **B. Failure to Exhaust Ramirez Theory of Meal Period Liability.**

14 Relevant to PAGA's requirement for a PAGA notice to set out "facts and
15 theories" of violation is *Uribe v. Crown Bldg. Maint. Co.* (2021) 70 Cal.App.5th 986,
16 1005, as modified on denial of reh'g (Oct. 26, 2021). In *Uribe*, the Court of Appeal
17 held that PAGA plaintiff Uribe had no authority to settle a PAGA claim for the
18 employer's failure to reimburse cell phone usage in violation of § 2802 where his
19 PAGA notice alleged the employer had violated § 2802 by failing to reimburse the
20 employee for "purchasing slip resistant shoes and maintaining his uniform." *Id.* Uribe
21 was seeking to settle claims of another plaintiff in a parallel PAGA case, Isabel
22 Garibay, who was already pursuing a PAGA action regarding unreimbursed cell
23 phone expenses. *Id.* at 989.
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1 Here, Ramirez’s April 17, 2023 PAGA Notice asserted, in relevant part, a claim
2 for meal period violations based on Defendants’ practice of paying employees
3 premium pay for missed meal periods, but not civil penalties, while continuing to
4 deprive employees of lawful meal periods. Ramirez’s PAGA Notice alleged
5 Defendants “treat the [meal] premium payment as the cost of doing business rather
6 than a deterrent to a dangerous practice that risks the welfare of both its employees
7 and patients.” Jacka Decl., Ex. C, p.4; *see* Dkt. #50, Chantall Ramirez’s “Arguments
8 and Evidence” in Opposition to Proposed Settlement Under [PAGA] Offered Pursuant
9 to *Turrieta v. Lyft* (2024) 16 Cal.5th 664, pp.5-8) (“Ramirez’s Arguments”). The
10 California Supreme Court stated in *Kirby v. Immoos Fire Protection* (2012) 53 Cal.4th
11 1244 that “section 226.7 does not give employers a lawful choice between providing
12 *either* meal and rest breaks *or* an additional hour of pay.” *Id.* at 1256 (italics in
13 original); *see* Dkt. #50, Ramirez’s Arguments, p. 4:15-20. “[A]n employer’s provision
14 of an additional hour of pay does not excuse a section 226.7 violation.” (*Kirby, supra*,
15 at 1256–57.)

16
17 Plaintiff Braswell’s September 12, 2024 amended PAGA notice describes
18 numerous theories of liability for meal period claims, including failure to pay meal
19 period premiums, automatically deducting thirty minutes whether employees received
20 compliant meal periods or not, improper rounding of meal period times, and failure to
21 pay any premiums for missed meal breaks. *See*, Bollinger Decl. (Dkt. #51), Ex. A
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1 (Sept. 12, 2024 Amended PAGA Letter), pp.6-8. However, it does not allege a theory
2 of violation based on Defendants' paying employees premium pay while continuing to
3 deprive them of sufficient meal periods.
4

5 In *Uribe*, as here, a settling PAGA plaintiff submitted to LWDA a PAGA
6 Notice alleging a violation of the same statute but different facts and theories of
7 violation than they sought to settle. Ramirez's Arguments (Dkt. #50, pp. 11-14)
8 cogently address Plaintiff Braswell's failure to exhaust PAGA's filing requirements
9 with respect to Ramirez's theory of meal period violations.
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11
12 Plaintiff Braswell does mention the Ramirez theory of meal period violation in
13 her latest amended complaint. However, while alleging violations in a court complaint
14 is necessary under PAGA, alone it is not sufficient if the PAGA notice does not
15 mention them. *See* §§ 2699(s)(1), 2699.3(a)(1)(A). Accordingly, Plaintiff failed to
16 exhaust the *Ramirez* Meal Break Claim and does not have authority to settle that
17 theory of liability because LWDA was never provided notice by Braswell sufficient to
18 allow it "to decide whether to allocate scarce resources to an investigation" of that
19 theory. *See Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 81; *Uribe*,
20 70 Cal.App.5th at 1005.
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24 **III. THE SETTLING PARTIES HAVE FAILED TO PROVIDE SUFFICIENT**
25 **JUSTIFICATION FOR THE SETTLEMENT AMOUNT.**

26 In reviewing a settlement under PAGA, a court must ensure that the settlement
27 is "fair, reasonable, and adequate in view of PAGA's purposes to remediate present
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labor law violations, deter future ones, and to maximize enforcement of state labor laws.” *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 5677. “[A] trial court has a duty to ensure the fairness and soundness of any settlement of PAGA claims alleging an employer's Labor Code violations. (§ 2699, subd. (s)(2), former subd. (l)(2).) PAGA’s overarching purpose is to “remediate present violations and deter future ones.” *Williams, supra*, 3 Cal.5th at p. 545. Here, the settling parties have provided no information regarding the value of the majority of claims they purport to release, and their moving papers fail to address important questions regarding the claims they do describe.

A. Failure to Discuss Valuation of Most Claims

Plaintiff Braswell’s description of the “Nature of the Alleged Violations”, and the *Kullar* analysis in particular, only address violations for unpaid wages due to a singular theory of rounding time punches (Dkt. #48, Mot. at pp. 7-8), meal and rest break violations due to rounding (*id.* at p. 8), noncompliant rest breaks (*id.*), and “claims derivative of the foregoing claims,” including inaccurate wage statements and late payment of wages upon separation of employment. *Id.*, pp. 9-10. Ramirez’s Arguments convincingly describe the settling parties’ failure to provide any evaluation of the value of the majority of claims being released. Ramirez’s Arguments (Dkt. #50), pp.14-17.

B. Valuation of Meal Period Claims

Plaintiff Braswell restates Defendants’ argument that their paying thousands of

1 dollars in premium pay for documented violations demonstrates their “good faith
2 effort to comply with the law.” Motion (Dkt. #48), at p.10:13-16. Yet, “Section 226.7
3 ... is primarily concerned with ensuring the health and welfare of employees by
4 requiring that employers provide meal and rest periods ... [citations]” *Kirby, supra*,
5 53 Cal.4th at p. 1255. As noted above, “provision of an additional hour of pay does not
6 excuse a section 226.7 violation.” *Id.* at 1256–57. In conflict with *Kirby*, Plaintiff
7 minimizes the violation that occurs even when an employer has paid a meal period
8 premium. Braswell’s failure to account for this violation causes her to undervalue the
9 meal period claims.

13 Plaintiff Braswell alleges that Defendants rounded employee time punches,
14 including for meal periods. Motion (Dkt. #48), p. 8:6-20.) Yet she does not account
15 for the strength of her position regarding rounding of meal period violations, in
16 particular. The California Supreme Court in *Donohue v. AMN Services, LLC* (2021)
17 11 Cal.5th 58, 61 held “employers cannot engage in the practice of rounding time
18 punches—that is, adjusting the hours that an employee has actually worked to the
19 nearest preset time increment—in the meal period context.” *Donohue* also held that
20 inaccurate or incomplete time records showing noncompliant meal periods due to
21 rounding create a rebuttable presumption of liability for meal period violations. (*Id.* at
22 74-77.) Presumably, the type of electronic records reviewed by Plaintiff Braswell’s
23 expert could be analyzed for rounded, late and short periods with relative ease as
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1 compared with rest breaks or off-the-clock work. The settlement covers September 15,
2 2020, through July 3, 2024. Saunders Decl. (Dkt #48-1) Ex. 1, p.2, ¶1.20. Thus,
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4 *Donohue* was the law of California for 40 months of the 45-month settlement period.

5 Ramirez's Arguments (Dkt. #50), at pp. 8-10, illustrate the settling parties'
6 failure to justify the settlement amount with regard to meal period violations. This
7 discussion refers to those calculations. From a violation rate of 75 percent of pay
8 periods, one would expect a PAGA settlement with a higher than average recovery per
9 employee per pay period. Yet the settling parties do not explain how this high
10 violation frequency affected their settlement amount. If a 75% violation rate yields a
11 settlement discounted by 98.5% of the potential recovery, what violation rate would
12 suffice to discount penalties merely by 80%? What purpose does discovery serve if
13 the negotiated settlement amount does not increase based on the frequency of
14 violations they discover?
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18 **C. Evidence that Defendant's Meal Period Violations Were Intentional.**

19 Plaintiff Braswell states "Here, no evidence came to light suggesting any of the
20 alleged violations were deliberate or willful, or that any Defendants were not
21 operating under a good faith belief that their rounding policy, for example, complied
22 with the law and/or resulted in employees being paid for all time worked." Motion
23 (Dkt. #48), at p. 11:20-24. However, her moving papers state that her expert's review
24 of records revealed *at least* one meal period violation in about 75 percent of employee
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1 pay periods. Motion (Dkt. #48) p. 8:18-20. This extremely high violation rate, along
2 with Ramirez's account of the evidence regarding noncompliant meal periods
3 Ramirez's Arguments, Dkt. #50, pp. 5-7, and impacted plaintiff Marlene Castro's
4 complaint of meal period manipulation,³ all point to Defendants consciously choosing
5 to provide noncompliant meal periods and treating the premium pay simply as a cost
6 of doing business. Moreover, Defendants were on notice that, under *Donohue*, meal
7 period rounding was unlawful.

10 **IV. FAILURE TO FILE NOTICE OF RELATED CASES**

11 Defendants filed a Notice of Pendency of Other Actions or Proceedings on
12 December 28, 2021, and a Notice of Related Cases on January 7, 2022, both
13 regarding the case now captioned *Stacy Rivera v. AHMC Healthcare, Inc. et al.*, U.S.
14 Dist. Ct., Central District, Case No. 2:22-cv-00104-DMG (AFMx) ("*Rivera*"). No
15 further notices of related cases appear on the docket of this action. Thus, it appears
16 none of the settling parties filed any notice of related cases except with regard to the
17 *Rivera* matter.⁴

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22 ³ The June 23, 2023 complaint in *Marlene Castro v. AHMC Seton Medical Center,*
23 *LLC*, San Mateo County Superior Court Case No. 23-CIV-02862 alleges the plaintiff
24 suffered three to four meal period violations per week, and that "Defendant began
25 having a third person clock in and out for Plaintiff's meal break, even though the
26 break was not actually taken. The time cards would therefore show that a break was
27 taken between 12:00 noon and 12:30pm, even though in reality the meal break was
28 taken at a later time. Before each pay period, plaintiff was forced to consent to the
inaccurate time cards in order to get paid." Ex. D, ¶14 to Bollinger Decl. (Dkt. #51).

⁴ Plaintiff Braswell now identifies several overlapping PAGA actions, including *Stacy Rivera v. AHMC Healthcare, Inc., et al.*, Los Angeles Sup. Ct. Case No. 21AHCV00100; *Chantall Ramirez v. AHMC Healthcare, Inc., et al.*, Los Angeles Sup. Ct. Case No. 23AHCV01423; *Marlene Castro v. AHMC Seton Medical Center*

1 Plaintiff Braswell states the parties reached agreement after a mediation in April
2 2024. Motion (Dkt. #50), p.3. Ramirez learned of the existence of the present action
3 and its settlement on September 26, 2024. Bollinger Decl. (Dkt #51), ¶9. By that time,
4 the Braswell settlement agreement had been fully executed, and Braswell had already
5 filed her Second Amended Complaint that now included the Ramirez meal period
6 theory of liability and all eight defendants.⁵

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9 Given that PAGA does not prohibit multiple plaintiffs from pursuing PAGA
10 claims for overlapping claims against the same employer, it is critical parties play by
11 the rules so overlapping matters can be handled with judicial economy and fairness to
12 all parties. Here, the settling parties knew at least by April that they were settling
13 claims being pursued by other plaintiffs, but they did not file any notice with the
14 Court or notify affected parties until late September. If Plaintiff Braswell or
15 Defendants had notified the Court and affected plaintiffs of other cases nearer the time
16 of the settlement, affected plaintiffs might have taken other actions such as seeking
17 consolidation, act jointly, or at worst to conserve resources, rather than having to
18 respond on short notice to the present motion for approval. PAGA enforcement works
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24 *LLC*, San Mateo Sup. Ct. Case No. 23-CIV-02862; *Liza Yap Gallinero v. AHMC*
25 *Whittier Hospital Medical Center LP*, Los Angeles Sup. Ct. Case No. 23STCV23649;
26 and *Brenda Garcia v. Monterey Park Hospital, Incorporated, et al.* Los Angeles Sup.
27 Court Case No. 24STCV06278. Saunders Decl. (Dkt. #48-1), ¶3.

28 ⁵ Plaintiff Braswell's March 28, 2022 First Amended Complaint (Dkt. #22), filed after
the Court granted (Dkt. #21) Defendants' Motion to Dismiss, only included two
defendants, AHMC San Gabriel Valley Medical Center, LP.; and AHMC Healthcare,
Inc. Braswell had no active complaint against the remaining defendants until
September 17, 2024 (Dkt. #44), though the settling parties treated it as so.

1 best when plaintiffs are not motivated to act alone to settle claims potentially being
2 pursued by other plaintiffs. In addition, as is made clear by Ramirez’s thoughtful
3 comments, the interests of law enforcement and deterrence would have benefitted
4 from her earlier input.
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6 **VI. PLAINTIFF’S STATEMENT THAT LWDA’S SILENCE MEANS IT**
7 **APPROVES A SETTLEMENT IS DISINGENUOUS AND FALSE.**

8 Finally, Braswell states that “many courts find it persuasive of approval if the
9 LWDA ultimately declines to offer any comment or objection to a proposed PAGA
10 settlement,” citing *Echavez v. Abercrombie & Fitch Co., Inc.*, 2017 WL 3669607, at
11 *3 (C.D. Cal. Mar. 23, 2017) and other cases. First, Plaintiff Braswell
12 mischaracterizes *Echavez*. There, the Court actually said, “Moreover, the Court finds
13 persuasive that LWDA *was invited to file a response* to the proposed settlement
14 agreement in this case and elected not to file any objections or opposition thereto. The
15 Court infers LWDA’s non-response is tantamount to its consent to the proposed
16 settlement terms, namely the proposed PAGA penalty amount.” *Id.* at *3 (emphasis
17 added).⁶ Thus, in *Echavez*, unlike here, LWDA was affirmatively invited to comment
18 on the proposed settlement agreement.
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23 Second, it is disingenuous to state or imply that LWDA’s silence regarding a
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25 ⁶ Another case cited by Plaintiff Braswell at p.13, *Jordan v. NCI Group, Inc.* (C.D.
26 Cal., Jan. 5, 2018, No. EDCV161701JVSSPX) 2018 WL 1409590, at *3, quotes
27 *Echavez* for the proposition that LWDA’s “non-response” regarding a proposed
28 settlement was “tantamount to consent,” without noting that the Court in *Echavez* had
affirmatively invited LWDA to comment. *See id.* at *3.

1 particular settlement means that it approves of the settlement. LWDA has delegated
2 oversight of PAGA to the PAGA Unit within the Labor Commissioner's Office. The
3 PAGA Unit receives about three hundred proposed settlements each month. Jacka
4 Decl. ¶3. The PAGA Unit has limited staff, and it does not have the resources to
5 review the large majority of proposed PAGA settlements. It is thus false to state that
6 LWDA's lack of comment regarding a proposed settlement signifies approval of it.
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9 The Legislature enacted PAGA in large part because "the government agencies
10 with existing authority to ensure compliance often lacked adequate staffing and
11 resources to police labor practices throughout an economy the size of California's."
12 *Williams, supra*, 3 Cal.5th at p. 545. The PAGA Unit's limited staffing is an important
13 reason why the Court should be open to well-reasoned comments from affected parties
14 regarding the fairness and sufficiency of a settlement.
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17 *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664, did not find a right for an objecting
18 PAGA plaintiff to *intervene* in an overlapping case (*id.* at 705), but it did state,
19 "Courts, in evaluating the adequacy and fairness of proposed PAGA settlements,
20 remain free to exercise discretion to consider arguments and evidence informally
21 offered by plaintiffs pursuing overlapping PAGA claims in separate actions. Indeed,
22 Turrieta and Lyft concede that such plaintiffs may offer objections to courts and that
23 'courts have discretion to consider [those] objections.'" *Id.* at 706.
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26 With their knowledge of the litigation and the strength and weaknesses of the
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1 claims, non-settling plaintiffs such as Ramirez play a beneficial role in identifying
2 problematic terms in a proposed settlement that may not otherwise be obvious to an
3 outsider – such as the extent, duration and seriousness of violations and the strength
4 and valuation of claims. They are thus uniquely situated to further PAGA’s goal of
5 adequate settlements by alerting the courts on the LWDA’s behalf to shortcomings in
6 other plaintiffs’ settlements. Rather than argue for exclusion of Ramirez’s comments,
7 Plaintiff Braswell should address the shortcomings identified therein.
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10 **VII. CONCLUSION**

11 For the foregoing reasons, LWDA requests that the proposed settlement not be
12 approved.
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14 /s/ Barton L. Jacka
15 Barton L. Jacka
16 Attorney for the Labor Commissioner,
17 State of California
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