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12 individually and on behalf of all others similarly situated.

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF SAN BERNARDINO**

15 TERINA RENEE LOCKE, individually and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 vs.

19 RIVERSIDE SANITARIUM, LLC; and DOES
20 1 through 20, inclusive,

21 Defendants.

Case No. CIVSB2129216

Assigned for all purposes to:

Hon. Jessica Morgan

Dept. S26

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PAGA SETTLEMENT**

Date: October 10, 2024

Time: 8:30 a.m.

Dept: S26

TO THE COURT, DEFENDANTS, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 10, 2024 at 8:30 a.m., in Department S26 of the Superior Court of the County of San Bernardino, located at 247 West Third Street, San Bernardino California 92415, Plaintiff Terina Renee Locke (“Plaintiff”) will and hereby does move this Court for an Order granting approval of the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* (“PAGA”) representative action settlement.

This Motion will be based upon this Notice, the attached Memorandum of Points and Authorities, the Declaration of Kristy R. Connolly, the Declaration of Terina Renee Locke, and exhibits filed herewith, and any additional papers or arguments submitted on or before the hearing on the Motion.

Dated: July 12, 2024

AEGIS LAW FIRM, PC

By

Kristy Acordy

Kristy R. Connolly
Attorneys for Plaintiff Terina Renee Locke

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Terina Renee Locke, (“Plaintiff”) seeks approval of a settlement of claims under the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA") against Defendant Riverside Sanitarium, LLC (“Defendant”) in the amount of \$270,000.000. Plaintiff alleges approximately 350 aggrieved employees who worked for Defendant that were allegedly not paid at least minimum wages for all hours worked, not paid overtime compensation, not provided with meal periods or compensation in lieu thereof, not provided with rest breaks or compensation in lieu thereof, not reimbursed for Defendant’s necessary business expenses, not provided with accurate wage statements, and not paid all wages owed upon separation of employment.

Under Labor Code § 2699(1)(2), the Court must review and approve any proposed PAGA settlement. Here, the proposed Settlement is sufficient to deter and punish future violations. The Settlement is attached to the Declaration of Kristy R. Connolly (“Connolly Decl.”) as **Exhibit 1**, and the proposed letter to be sent to the aggrieved employees is attached thereto as **Exhibit A**. Plaintiff now seeks this Court's approval of the Settlement terms.

II. FACTUAL AND PROCEDURAL BACKGROUND

On October 13, 2021, Plaintiff’s counsel sent a letter to the California Labor & Workforce Development Agency (“LWDA”) via online submission and to Defendant via certified mail regarding Defendant’s alleged violations. *See* Connolly Decl., ¶ 3, Exhibit 2. (“Connolly Decl.”). The LWDA did not respond to this notice within 65 days, indicating it did not intend to investigate, thus allowing Plaintiff to file the instant lawsuit pursuant to Labor Code Section 2699.3(a)(2)(A). *Id.*

On October 15, 2021, Plaintiff filed her Complaint as a proposed class action lawsuit, alleging that, Defendant failed to: (1) pay minimum wages, (2) pay overtime wages, (3) provide lawful meal periods or compensation in lieu thereof, (4) authorize or permit lawful rest breaks or provide compensation in lieu thereof, (5) reimburse class members for Defendant’s Necessary Business expenses, (6) provide accurate itemized wage statements, (7) timely pay all wages during employment, (8) pay all wages timely upon separation of employment and, (9) abide by the

1 requirements of California Business and Professions Code Section 17200 *et seq.* Connolly Decl. at
2 ¶ 4. On December 20, 2021, Plaintiff filed a First Amended Complaint adding a claim for
3 Enforcement of the Private Attorneys General Act (“PAGA”). *Id.*

4 Due to the presence of arbitration agreements that Plaintiff and class members allegedly
5 signed, Plaintiff dismissed her individual and class claims and proceeded on a PAGA-only basis.
6 Connolly Decl., ¶ 6.

7 The Parties agreed to attend private mediation. Connolly Decl., ¶ 7. In preparation for
8 mediation, Defendant informally produced data and documents for Plaintiff to evaluate the PAGA
9 claims and calculate the alleged exposure, including policy documents, a 15% sample of time and
10 payroll records, and a list of aggrieved employees’ dates of employment to calculate the pay periods
11 worked. *Id.* Plaintiff’s Counsel engaged an expert to quantify the potential exposure using the time
12 and payroll records, and then assessed the risks associated with each of the claims. *Id.*

13 The parties attended mediation on April 2, 2024, with Jeffrey Ross, a respected class action
14 and PAGA action mediator. Connolly Decl., ¶ 8. After a full day of negotiating, the Parties agreed
15 to a settlement amount and executed a Memorandum of Understanding with the material terms the
16 parties had agreed to. *Id.* The Parties spent the next few months negotiating the terms of the
17 Settlement, which was finalized in June of 2024. *Id.*

18 Plaintiff provided notice of the Settlement and this Motion to the LWDA on July 12, 2024.
19 Connolly Decl., ¶ 9, Exhibit 3.

20 **III. PAGA REQUIREMENTS**

21 Based on the California Supreme Court's opinions in *Arias v. Superior Court*, 46 Cal. 4th
22 969 (2009), and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014),
23 Plaintiffs can seek appropriate civil penalties as called for under PAGA on behalf of the State of
24 California and other similarly aggrieved employees without seeking class certification or meeting
25 the requirements of class certification (i.e. numerosity, typicality, commonality and adequacy). As
26 such, the class action two-step preliminary and final approval process is not required.

27 PAGA was enacted to allow enforcement of the Labor Code and recovery of penalties by
28 the State and by private individuals who have been aggrieved by their employers. The statute calls

1 for 75% of any penalties recovered to be paid to California's LWDA and the remaining 25% to the
2 aggrieved employees (Cal. Lab. Code § 2699(i) (2016)).

3 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee
4 must first provide written notice to the LWDA and the employer of the particular Labor Code
5 violations the aggrieved employee alleges the employer has violated. *See* Cal. Labor Code §
6 2699.3(a)(1)(A) (2016). Once the LWDA notifies the aggrieved employee that it does not intend to
7 investigate the alleged violations, or if the LWDA does not respond within a certain time period,
8 the aggrieved employee is then allowed to proceed in a civil action against the employer on behalf
9 of the LWDA and all other similarly aggrieved employees. *See* Cal. Labor Code § 2699.3(a)(2)(A)
10 (2016).

11 In 2009, the California Supreme Court considered the issue of whether an aggrieved
12 employee who brings a PAGA representative claim needs to meet class certification requirements.
13 *Arias*, 46 Cal. 4th at 976. After a substantial review of the legislative history of PAGA, the Court
14 held that an aggrieved employee's representative action brought on behalf of other aggrieved
15 employees against an employer for PAGA violations does not need to meet the requirements for
16 class certification. *Id.* at 975, 980-88. As the Court held, a plaintiff bringing suit under PAGA does
17 so as the proxy or agent of California's labor law enforcement agencies. *Id.* at 986. Because the
18 employee's PAGA action functions as a substitute for an action brought by the government itself, a
19 judgment in the PAGA action binds all those who would be bound by a judgment in an action
20 brought by the government. *Id.*

21 Finally, in a settlement of a PAGA action brought by an aggrieved employee, the court
22 need only "review and approve" the settlement. Cal. Lab. Code § 2699(1)(2) (2016). The Parties
23 to this current PAGA action have reached such an agreement and now seek this Court's approval of
24 the proposed settlement.

25 **IV. THE SETTLEMENT TERMS AND DISTRIBUTION OF PENALTIES**

26 The Parties have agreed that Defendant will pay a total settlement amount of \$270,000.000
27 (the "Gross Settlement Amount"). *See* Settlement Agreement, § 3.1. From this amount, up to one-
28 third (1/3) of the Gross Settlement Amount, or \$90,000.00, is allocated to attorneys' fees and up to

1 \$25,000.00 to actual litigation costs. Settlement Agreement, § 3.2.2. To date, Plaintiff's counsel has
2 spent \$22,700.15 in actual litigation costs. *See Connolly Decl.*, ¶ 27, Exhibit 4. The Settlement
3 allocates up to \$4,750 to payment for Phoenix Settlement Administrators' costs associated with
4 administration of the Settlement. Settlement Agreement, § 3.2.3. For Plaintiff's efforts in assisting
5 with the Lawsuit and in exchange for a general release of her individual claims, \$10,000.00 is
6 allocated to Plaintiff. Settlement Agreement, § 3.2.1.

7 After deducting the above amounts for attorneys' fees and costs, Settlement
8 Administrator's costs, and Plaintiff's individual settlement award, the remaining fund will
9 constitute the "PAGA Penalties" in which 75% will be paid to the LWDA (the "LWDA PAGA
10 Payment") and 25% will be paid to the Aggrieved Employees as their "Individual PAGA
11 Payments". Settlement Agreement, § 3.2.4. The Aggrieved Employees are all persons employed by
12 Defendant in California and classified as a non-exempt employee at any time during the PAGA
13 Period. Settlement Agreement, § 1.4. The PAGA Period means the period from October 13, 2020
14 through April 1, 2024. Settlement Agreement, § 1.19.

15 The Individual PAGA Payments will be calculated pro rata based on the number of pay
16 periods working during the PAGA Period. Settlement Agreement, § 3.2.4.1. If the number of PAGA
17 Pay Periods exceeds 9,000 by more than 14% (e.g. 11,260), then the Gross Settlement Amount will
18 increase pro rata per additional PAGA Pay Period at a rate of \$30 per additional PAGA Pay Period
19 for each pay period that exceeds 11,260. Settlement Agreement, § 8. The Individual PAGA
20 Payments shall be paid to the Aggrieved Employees by way of a single check which will be valid
21 for 180 days. Settlement Agreement, § 4.3.1. All funds not claimed within 180 days of mailing of
22 payment shall be sent to the California State Controller's Office Unclaimed Property Fund with an
23 identification of the amount of unclaimed funds attributable to each PAGA Employee. Settlement
24 Agreement, § 4.3.3. The Individual PAGA Payments will be characterized as penalties for tax
25 purposes and reported on IRS Form 1099. Settlement Agreement, § 3.2.4.2.

26 The Settlement Administrator will issue checks for the Individual PAGA Payments and
27 send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. Settlement
28 Agreement, § 4.3.1. For any returned payments without a forwarding address, the Settlement

1 Administrator shall conduct an Aggrieved Employee Address Search. Settlement Agreement, §
2 4.3.2. Aggrieved Employees will receive a letter along with their Individual PAGA Payment
3 explaining the reason for the payment, the content of which will be submitted to the Court for
4 approval. Settlement Agreement, § 4.3.1. The proposed letter is attached to the Settlement
5 Agreement as Exhibit A.

6 In exchange for the settlement payment, the State of California and the Aggrieved
7 Employees will release the “Released Parties” meaning “Defendant and each of its former and
8 present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors,
9 successors, assigns, subsidiaries, and affiliates” from “all claims for PAGA penalties that were
10 alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint
11 and the PAGA Notice, arising during the PAGA Period, including claims for (1) Failure to Pay
12 Minimum Wages, (2) Failure to Pay Overtime Wages, (3) Failure to Provide Meal Periods, (4)
13 Failure to Provide Rest Periods, (5) Failure to Provide Accurate Wage Statements, (6) Failure to
14 Timely Pay All Wages During Employment and Due at Termination, (7) Failure to Reimburse
15 Expenses, and (8) Failure to Maintain Accurate and Complete Records.” Settlement Agreement, §§
16 1.26, 5.1.

17 **V. THE SETTLEMENT IS FAIR AND REASONABLE**

18 **A. Standard for Approval**

19 PAGA settlements must be “fair, reasonable, and adequate in view of PAGA’s purposes to
20 remediate present labor law violations, deter future ones, and to maximize enforcement of state
21 labor laws.” *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021). The court must find that
22 the plaintiff “has adequately represented the state’s interests, and hence the public interest.” *Id.* at
23 89. The LWDA must be notified of the settlement and be given an opportunity to object. The court
24 may look to parallel class action guidelines to determine what is “fair, adequate and reasonable.”
25 *Kullar v. Foot Locker Retail*, 168 Cal.App.4th 116, 126 (2008). In that analysis, the court has
26 “broad discretion in making this determination.” *In re Microsoft I-V Cases*, 135 Cal.App.4th 706,
27 723 (2006). Relevant factors may include “the strength of the plaintiffs’ case, the risk, expense,
28 complexity and likely duration of further litigation, ... the amount offered in settlement, the extent

1 of discovery completed and the stage of the proceedings, the experience and views of counsel, the
2 presence of a governmental participant” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801
3 (1996).

4 **B. The Settlement Meets the Standard for Approval**

5 Here, the \$270,000 Gross Settlement Amount is reasonable for a group of approximately
6 350 employees. A penalty of \$270,000 is large enough to punish Defendant for alleged past
7 violations and deter future violations. The settlement amount is equivalent to a penalty of about
8 \$771 per employee. At the same time, the penalty amount is not so large as to be unjust, oppressive
9 or confiscatory, considering the company’s potential exposure explained below. Connolly Decl., ¶
10 10. The Gross Settlement Amount is also reasonable in light of the facts of the foregoing action,
11 the real risk that no PAGA penalties would be paid, and inherent risks and uncertainties associated
12 with PAGA claims. *Id.* at ¶ 11.

13 Plaintiff calculated the potential exposure at the initial violation rate of \$100.00 per pay
14 period as follows: 9,000 x \$100.00 per pay period is \$900,000 for an estimated 9,000 pay periods.
15 Connolly Decl., ¶ 12. If the Court stacked different types of penalties in each pay period, Plaintiff
16 calculated the exposure as follows:

- 17 a. 9,000 pay periods x \$100 per pay period x 96.2% violation rate = \$865,800.00
18 for rest break violations;
- 19 b. 9,000 pay periods x \$100 per pay period x 35.3% violation rate = \$317,700.00
20 for meal period violations;
- 21 c. 9,000 pay periods x \$100 per pay period x 8.4% violation rate = \$75,600 for
22 unpaid wages for failure to pay overtime at the regular rate;
- 23 d. 9,000 pay periods x \$100 per pay period x 100% violation rate = \$900,000.00 for
24 wage statement penalties and;
- 25 e. 9,000 pay periods x \$100 per pay period x 100% violate rate= \$900,000.00 for
26 unreimbursed business expenses. *Id.*

27 Defendant raised a number of arguments during settlement negotiations and provided
28 evidence that could have defeated Plaintiff’s claims. Connolly Decl., ¶ 14. For example, Plaintiff

1 argued that Defendant failed to relieve employees of duty during rest breaks due to the requirement
2 that employees must remain on premises during all rest breaks. *Id.* However, Defendant argued
3 that it has removed this on-premises language from its written policies and pointed to language
4 that provided for employees to be relieved of all duties during breaks, even if they were taken on-
5 premises. *Id.* Defendant also argued that employees could choose to waive their breaks, which
6 could cause manageability problems at trial as this claim would heavily rely on employee
7 testimony. *Id.* Additionally, Defendant argued that Plaintiff's meal violation rate failed to take
8 into account the signed written meal waivers and the automatic payment of meal period premiums.
9 *Id.* Plaintiff also argued that Defendant failed to incorporate the value of the non-discretionary
10 bonuses into the overtime rate of pay, but Defendant presented authority where courts have found
11 that sign-on bonuses were not required to be incorporated into the regular rate. *Id.* Moreover,
12 Plaintiff alleged Defendant failed to reimburse necessary business expenses by requiring
13 employees to purchase their own personal protective equipment for use at work. *Id.* However,
14 Defendant responded by providing evidence that it otherwise provided all personal protective
15 equipment that would be required at work, such as masks and gowns and also provided policy
16 documents that state employees would be reimbursed for expenses submitted. *Id.* Finally,
17 Plaintiff's wage statement claim was derivative of the above-mentioned claims, which means she
18 would not be able to recover any derivative penalties if she failed to prove the underlying claims.
19 *Id.*

20 Another crucial factor in evaluating the value of a PAGA-only case is that all PAGA
21 awards are discretionary and can be reduced by the Court. Connolly Decl., ¶ 13. Under Labor
22 Code § 2699(e)(2), the Court can reduce the PAGA penalties "if, based on the facts and
23 circumstances of the particular case, to do otherwise would result in an award that is unjust,
24 arbitrary and oppressive, or confiscatory." In other words, were this matter to go to trial, any award
25 granted would be at the discretion of the Court. *Id.* In settling this case, Plaintiff recognizes that,
26 although she believes there would be no persuasive grounds to reduce the penalties, the Court
27 could determine otherwise and significantly reduce the PAGA penalties. *Id.* The wide range of
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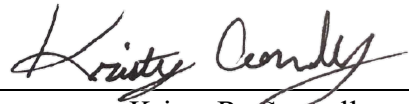
1 potential recovery and the additional delays and risks of trial justified settling for a reasonable
2 amount of recovery. *Id.*

3 **VI. CONCLUSION**

4 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement
5 pursuant to PAGA in this Action.

6
7 Dated: July 12, 2024

AEGIS LAW FIRM, PC

8 By 
9 Kristy R. Connolly
10 Attorneys for Plaintiff Terina Renee Locke
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