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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

WENDY CARDENAS, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

ASPLUNDH CONSTRUCTION, CORP;
347 GROUP, INC.; and DOES 1-10,
inclusive,

Defendants.

Case No. 21STCV37130
[Consolidated with Case No.
21STCV41421]

*Assigned for all purposes to
Hon. David S. Cunningham
Dept. 11*

**PLAINTIFF'S SECOND
SUPPLEMENTAL BRIEF IN SUPPORT
OF MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT**

Date: September 21, 2023
Time: 1:45 p.m.
Dept: 11

1 **I. INTRODUCTION**

2 Plaintiff Wendy Cardenas (“Plaintiff”) provides this supplemental submission in response to the
3 Court’s July 17, 2023 ruling on Plaintiff’s Motion for Preliminary Approval of Class and Representative
4 Action Settlement. On July 17, 2023, the Court continued the hearing to September 21, 2023 at 1:45
5 p.m., with instructions to address the concerns outlined in the Class Action Settlement Checklist.

6 Concurrently with this submission, Plaintiff submits the: (1) the Supplemental Declaration of
7 Wendy Cardenas in support of Plaintiff’s Motion for Preliminary Approval, (2) the Declaration of
8 Cheryl Trago in Support of Unopposed Motion for Preliminary Approval; and (3) the Supplemental
9 Declaration of Alex J. Valle in support of Plaintiff’s Supplemental Submission in support of her Motion
10 for Preliminary Approval, with the following exhibits:

- 11 1. Exhibit 1: Amended Class Action and PAGA Settlement Agreement and Class Notice;
12 and
13 2. Exhibit 2: Confirmation of Submission of the Amended Class Action and PAGA
14 Settlement Agreement and Class Notice and Supplemental Briefing to the LWDA.

15 Plaintiff hereby supplements her February 22, 2023 MPA filings, and addresses the Court’s
16 concerns from its tentative ruling below.

17 **II. THE COURT’S TENTATIVE RULING**

18 **A. Moving Papers – Miscellaneous – The Class Representative Enhancement**

19 The Court seeks further clarification as follows:

20 **“Explanation as to why any class representative enhancement is reasonable, including**
21 **what the class representative did beyond the expected services of any class**
22 **representative. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186**
23 **Cal.App.4th 399, 412; *Radcliffe v. Experian Information Solutions Inc.* (9th Cir. 2013)**
24 **715 F.3d 1157, 1165.) In PAGA settlements explanation should be provided as to why**
25 **an incentive award is appropriate.**

- 26 • **The proposed \$10,000 Enhancement Payment for Plaintiff is quite high**
27 **absent substantial justification. The Court will decide the issue of the enhancement**
28

1 **awards at the time of final approval.”**

2 Plaintiff provides supplemental briefing as follows:

3 Plaintiff seeks an incentive award for accepting the responsibilities of representing the interests
4 of all Class Members and assuming the risks and potential costs that were not borne by any other Class
5 Members. Plaintiff estimates that she has dedicated between approximately 35 and 40 hours of her
6 time to this action. (Supplemental Declaration of Wendy Cardenas (“Supp. Cardenas Decl.”) ¶ 4.)

7 Furthermore, unlike other Class Members, Plaintiff signed a broad general release affecting
8 potential employment claims she brought or could have brought against Defendants. (*Id.* at ¶ 8;
9 Amended Class Action PAGA Action Settlement Agreement and Class Notice (“Amended Settlement
10 Agreement”), ¶¶ 6.1–6.2.) This is significant, as Plaintiff acknowledges that she will forfeit any potential
11 claim from her allegations she endured racial remarks from management and was terminated because of
12 her race and/or ethnicity. (Supp. Cardenas Decl., ¶¶ 5-13.) Plaintiff believed she had a strong racial
13 discrimination claim (which Defendants would undoubtedly dispute), but Plaintiff put the interests of
14 the Class above her own in focusing her efforts on the Class case. (*Id.* at ¶ 14.) However, these potential
15 claims are still valuable and Plaintiff is seeking only a modest increase to the typical enhancement award
16 in recognition of her broader release of claims.

17 Thus, Plaintiff should be adequately compensated for her role in obtaining this Settlement.

18 **B. Settlement Agreement – Class Period and PAGA Period Duration**

19 The Class Period is defined as “the period from April 12, 2017 through the date of preliminary
20 approval of the instant settlement, or an alternative date to be selected by Asplundh at its sole discretion,
21 not to exceed April 30, 2023. The PAGA Period is defined as “the period from October 7, 2020 through
22 the date of preliminary approval of this settlement, or an alternative date to be selected by Defendants, at
23 their sole discretion, not to exceed April 30, 2023.” The Court seeks clarification as to why the Class
24 Period and PAGA Period, which may be amended at Defendants’ discretion, are appropriate.

25 Plaintiff provides supplemental briefing as follows:

26 Based on the Court’s guidance, the parties have revised the terms of the previously filed Revised
27 Class Action and PAGA Action Settlement Agreement and Class Notice and settlement-related
28 documents. The new Amended Settlement Agreement removes Defendants’ ability to select an

1 alternative date ending the Class Period or PAGA Period, and instead provides a date certain, ending
2 both the Class Period and the PAGA Period on September 1, 2023. (Amended Settlement Agreement,
3 ¶¶ 1.4, 1.5, 1.12).

4 **III. CONCLUSION**

5 Having provided additional information in support of the Motion for Preliminary Approval, the
6 Court is respectfully requested to grant preliminary approval of the Settlement and conduct the final
7 approval hearing on January 30, 2023 at 9:30 a.m.

8
9 Dated: September 8, 2023

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11 By: /s/ Alex J. Valle
12 Alex J. Valle
13 Attorney for Plaintiff Wendy Cardenas
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