

Attorney for Plaintiff
Wendy Navarro Garcia

Defendants.

NO. 30-2021-01235358-CU-OE-CXC
PLAINTIFF'S SUPPLEMENTAL BRIEF IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL
Date: August 25, 2023
Time: 1:30 p.m.
Dept: CX103

The court requested an explanation or documentation regarding why Plaintiff should receive more than the standard \$5,000 payment. Pursuant to *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 804, factors to consider for a class representative enhancement award include: “[T]he actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation.”

1 Of course, the case would not exist without Ms. Garcia so Plaintiff's willingness to
2 step forward was an action taken to protect the interests of the class. Also, as explained
3 further in the supporting declaration, the average payment to the class members is \$587.45
4 which is a good result for 1,172 class members. Finally, Plaintiff provided key information
5 for setting up the case to start and has been available throughout the case, including
6 mediation. These actions, taken as a whole, work to support the service award request.

7 8 II. Calculations Supporting Claim Valuations

9 Plaintiff engaged Econ One, an economics expert agency, to review the data
10 provided for mediation. Using the data provided, Econ One prepared the attached
11 spreadsheets that showed the calculations used to support the claim valuations. The
12 spreadsheets explain how the data integrated with the expert's calculations to support the
13 maximum claim valuations. The spreadsheets are attached to the supplemental declaration
14 of Adam Rose. Regarding how the calculations integrate with valuations:

15 Through an analysis of the meal break punch records, Econ One discovered a 5.4%
16 violation rate (i.e., 5.4% of shifts which were meal break eligible had either a missed, late,
17 or short meal break.) As shown in the spreadsheet, that yielded a valuation of \$33,571.

18 Class Members also recorded their rest break times. In analyzing the rest break
19 punch records, Econ One found that rest breaks were either short or missed entirely on
20 24.1% of shifts. This violation rate tracks Plaintiff's experience, alleging that she missed
21 one or more rest breaks on approximately 25% of her shifts, substantiating the valuation of
22 \$164,881.

23 The liability analysis assumes an average of 5 minutes of off the clock work per shift
24 relating to having to perform small, work-related tasks at the end of a shift, and after
25 clocking out, or before clocking in, such as filling ice machines and otherwise preparing the
26 restaurant for business.

27 Finally, the waiting time penalties and wage statement penalties are derivative of the
28 above violations.

1 III. Submission of PAGA Notice/Copy of PAGA Letter

2 A copy of the PAGA notice and proof of submission to the LWDA is attached to the
3 supplemental declaration of Adam Rose.

4
5 IV. Edits to Supplemental Documents

6 Redlined versions of the following are attached to the supplemental declaration of
7 Adam Rose: 1) amended settlement agreement, 2) class notice, 3) opt-out form, and 4)
8 preliminary approval order.

9
10 A. Edits to Settlement Agreement

11 For the settlement agreement, the response deadline was extended to 60 days in
12 paragraph 1.42. Also, paragraph 8.1 now states the Administrator will post the final
13 approval order and judgment, operative complaint, signed settlement agreement, class
14 notice, and order for preliminary approval on its website. In paragraph 8.5.1, text was added
15 that the Court ultimately decides the validity and authenticity of the Exclusion Request.
16 Also, Paragraph 10.3 of the settlement agreement added language that there is continuing
17 jurisdiction pursuant to Code of Civil Procedure section 664.6 and Rule of Court 3.769(h).

18
19 B. Edits to Class Notice

20 For the class notice, the title was revised to include “and PAGA”. In Section IV(A),
21 “enhancement” was changed to “Class Representative Service Award.” In Section IV(C),
22 the end date for the class period was specified as February 10, 2023. In Section V(B), the
23 following language was added: “Class Members who opt out are still PAGA Aggrieved
24 Employees and will receive an individual PAGA payment; thus class members cannot opt
25 out of a PAGA settlement.” A Section V(E) was added to state: “Summary of Deadlines to
26 Object, Opt-Out, or Dispute. The deadline to submit a Request for Exclusion or an
27 Objection or Dispute to the Settlement is 60 days after the mailing of the Notice of Class
28 and PAGA Settlement or 45 days after remailing.”

1 A Section VII(C) was added to state: “A Class Member can attend the Final
2 Approval hearing if he or she wants to verbally object to the Settlement.” Section IX was
3 reworded to state “opt out” instead of “exclusion” and included related opt out language.

4 In Section X, the language was reworded to discuss objecting the settlement rather
5 than intervening in the settlement and added the 60-day deadline language (or 45 days if
6 notice is remailed).

7
8 C. Edits to Opt-Out Form

9 For the opt-out form, language was added in the first paragraph regarding 60-day
10 deadline language (or 45 days if the notice is remailed).

11
12 D. Edits to Preliminary Approval Order

13 A paragraph 10 was added that states: “Class members may submit written
14 objections or appear at the final approval hearing to verbally object to the Settlement.”
15 Paragraph 11 was added: “Class members may dispute the allocation of workweeks.”
16 Paragraph 12 was added: “Class members who are also PAGA Aggrieved Employees
17 cannot opt out of the PAGA settlement, will be bound by the PAGA release, and will
18 receive their individual PAGA payments.”

19 Paragraph 13 now includes the address of the court and department number for the
20 hearing on the motion for final approval. Paragraph 14 indicates the settlement agreement is
21 attached to the order. Paragraph 16 was added to state: “The Settlement Administrator will
22 provide a copy of its invoice with an affidavit regarding administration of Settlement.”
23 Paragraph 17 was added to include the delineation of settlement terms. In Paragraph 18,
24 language was added to state the response time is 45 days for remailed notices, and a
25 proposed final approval hearing date of January 4, 2024 at 1:30 p.m. was indicated.

26 Date: August 11, 2023

FRONTIER LAW CENTER

/s/ Adam Rose

Attorney for Plaintiff

Wendy Navarro Garcia