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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

MIREYA SERRATO MARTINEZ, on
behalf of herself and all “aggrieved
employees” pursuant to Labor Code § 2698
et seq.,

Plaintiffs,

v.

EM TORTILLAS, LLC, a California limited
liability company, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: 30-2022-01263512-CU-OE-CXC

*Assigned to Hon. Melissa R. McCormick, Dept.
CX104*

**JOINT THIRD SUPPLEMENTAL
BRIEFING IN SUPPORT OF UNOPPOSED
MOTION FOR AN ORDER APPROVING
SETTLEMENT OF CLAIMS BROUGHT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004,
AWARDING ATTORNEYS’ FEES, COSTS,
ENHANCEMENT AWARD, AND
REIMBURSEMENT OF SETTLEMENT
ADMINISTRATION EXPENSES, AND
ENTERING JUDGMENT THEREON**

Date: January 23, 2025

Time: 2:00 p.m.

Dept.: CX104

Complaint Filed: June 3, 2022

1 **I. INTRODUCTION**

2 Plaintiff MIREYA SERRATO MARTINEZ (“Plaintiff”) and Defendant EM
3 TORTILLAS, LLC (“Defendant”) (collectively, “the Parties”) hereby respectfully submit this
4 Third Joint Supplemental Briefing to address the issues raised in the Court’s August 30, 2024
5 Minute Order and August 29, 2024 Tentative Ruling (the “Ruling”) regarding Plaintiff’s
6 Unopposed Motion for an Order Approving Settlement of Claims Brought Pursuant to the Private
7 Attorneys General Act of 2004, Awarding Attorneys’ Fees, Costs, Enhancement Award, and
8 Reimbursement of Settlement Administration Expenses, and Entering Judgment Thereon (the
9 “Motion”). *See Exhibit A* to Third Supplemental Declaration of Daniel F. Gaines (“3rd Suppl.
10 Gaines Decl.”).

11 **II. TOPICS ADDRESSED IN THE COURT’S RULING**

12 **1. Plaintiff’s General Release Payment**

13 The Parties have jointly prepared the First Amended Settlement Agreement and Release of
14 Private Attorneys General Act Claim (the “Amended Settlement”) which incorporated the changes
15 from the First Amendment to the Settlement Agreement and Release of Private Attorneys General
16 Act Claim [attached as Exhibit B to the Second Supplemental Declaration of Daniel F. Gaines
17 (ROA 79, Ex. B)], reduced the Gross Settlement Amount, reduced the amount of attorneys’ fees
18 requested, revised the settlement installment payments schedule¹, and took out reference to
19 Plaintiff’s general release payment/enhancement award. *See* 3rd Suppl. Gaines Decl. at ¶ 3 and
20 **Exhibits B** and **C**.

21 In the original Settlement Agreement, both Plaintiff’s PAGA claims and her individual
22 claims were resolved and memorialized in one agreement (ROA 79, Ex. B). *Id.* at 4. The Court did

23 _____
24 ¹ Defendant is unable to fund the settlement as originally contemplated in the Parties’ original
25 settlement agreement due to financial hardship. *See generally* Declaration of Brian Murrieta (a
26 declaration from Defendant’s Managing Partner describing its current financial situation). As a
27 result, the Parties have revised the settlement installment payments to be paid over twenty-four (24)
28 monthly payments, instead of two (2) payments over approximately three months. Payments to the
State, PAGA Members, Plaintiff’s Counsel, and the Settlement Administrator will still be made in
two pro-rata disbursements. These disbursements will occur after twelve (12) monthly settlement
installment payments have been deposited. *See Exhibit B* to 3rd Suppl. Gaines Decl. at ¶¶ 9 and
34.

1 not believe this process was appropriate (i.e., that Plaintiff's general release payment for a full
2 release of her individual claims against Defendant was incorporated into the PAGA settlement). *Id.*

3 To address the Court's concerns, the Parties prepared the Amended Settlement to remove
4 reference of Plaintiff's general release payment/enhancement award being paid from the PAGA
5 Settlement and Gross Settlement Amount. *Id.* at ¶ 5. The Amended Settlement also reduces the
6 Gross Settlement Amount by \$10,000, which will instead be paid to Plaintiff in consideration for
7 her full general release of claims against Defendant. *Id.* This agreement is memorialized in the
8 separate Confidential Settlement Agreement and Release of Claims (the "Individual Settlement").
9 *Id.* at **Exhibit D**.

10 To ensure that the reduction of the Gross Settlement Amount would not affect the Net
11 Settlement Amount, and consequently, how much is paid to the LWDA and to the PAGA Members,
12 Plaintiff's Counsel reduced the amount of attorneys' fees we were requesting by \$10,000 so that
13 the Net Settlement Amount would remain the same. *See Exhibit B* to 3rd Suppl. Gaines Decl. at
14 §§ C(28)(b) and (d).

15 In the Ruling, the Court approved a Net Settlement Amount of \$131,098.63. This was
16 calculated as follows:

17 \$225,000 Gross Settlement Amount
18 - \$75,000 attorneys' fees
19 - \$15,551.37 litigation costs
20 - \$3,350 settlement administrator costs
21 \$131,098.63 Net Settlement Amount²

22 Here, under the Amended Settlement, the Net Settlement Amount would remain the same,
23 less \$650 to account for Phoenix Settlement Administrator's additional fees, discussed below.

24 \$215,000 Gross Settlement Amount
25 - \$65,000 attorneys' fees
26 - \$15,551.37 litigation costs
27 - \$4,000 settlement administrator costs
28 \$130,448.63 Net Settlement Amount

² Plaintiff's \$10,000 general release payment/enhancement award was denied by the Court in the Ruling.

1 Accordingly, the analysis regarding the fairness of the Settlement has not changed because
2 the payouts to the State and PAGA Members are nearly identical as previously approved by the
3 Court in the Ruling. *See* 3rd Suppl. Gaines Decl. at ¶ 7 and **Exhibit A**.

4 **2. Settlement Administrator Fees**

5 Jodey Lawrence of Phoenix Settlement Administrators (“Phoenix”) has provided a
6 supplemental declaration to support its request for administrator costs in the amount of \$4,000. *Id.*
7 at ¶ 8. The supplemental declaration is being concurrently filed with this declaration and briefing
8 and provides a breakdown of why Phoenix’s fees to administer the settlement will be \$4,000. *Id.*
9 As previously discussed in further detail in the Second Supplemental Briefing (ROA 77), Phoenix’s
10 bid needed to increase to account for the additional certified Spanish translation of the Eligible Pay
11 Periods Dispute Form and to correct the initial bid which only provided for one disbursement to
12 the PAGA Members. *Id.* The supplemental declaration of Jodey Lawrence provides a breakdown
13 of the additional costs associated with the second disbursement. *Id.*

14 Phoenix has also provided certified Spanish translations of both the Notice of PAGA
15 Settlement and Release of Claims (the “Notice”) and the Eligible Pay Periods Dispute Form. The
16 certified Spanish translations are attached as Exhibit 2 to the Third Amended Proposed Order
17 Granting Approval of PAGA Settlement and Entering Judgment. *Id.* at ¶ 9.

18 **3. Eligible Pay Periods Dispute Form and Notice to PAGA Members**

19 The Parties have revised the Notice to remove the underlined sentence on the first page of
20 the Notice (ROA 79, Ex. A) and the last sentence of the same paragraph was removed and replaced
21 with the following sentence: “The parties may attempt to reach agreement on disputes, and the
22 settlement administrator may make the initial decision regarding disputes, but the court may review
23 any decision made by the parties and/or the settlement administrator regarding a dispute.” The
24 Parties further revised the Notice to reflect the changes made in the Amended Settlement, discussed
25 above. *See* 3rd Suppl. Gaines Decl. at ¶¶ 10-11, Exhibit A to **Exhibit B**, and Exhibit A to **Exhibit**
26 **C**.

27 **4. Notice to the LWDA**

28 As shown in the Declaration of Service and the Third Supplemental Declaration of Daniel

1 F. Gaines at paragraph 13, on January 9, 2025, Plaintiff uploaded this third supplemental briefing,
2 the third supplemental Gaines declaration, Amended Settlement, and Declaration of Service to the
3 LWDA. A true and correct copy of the email received by Plaintiff's Counsel confirming submission
4 is attached to the 3rd Suppl. Gaines Decl. as **Exhibit F**.

5 **III. CONCLUSION**

6 Accordingly, the Parties respectfully request that this Court grant Plaintiff's Motion.

7 Dated: January 9, 2025

GAINES & GAINES
A Professional Law Corporation

10 By: Daniel F. Gaines
DANIEL F. GAINES
Attorneys for Plaintiff

12 Dated: January 9, 2025

GIGLIOTTI & GIGLIOTTI

15 By: /s/ Joseph J. Gigliotti (as authorized 1/9/2025)
JOSEPH J. GIGLIOTTI
Attorneys for Defendant