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13 INSPERITY PEO SERVICES, LP

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF SAN DIEGO

16
17 JOSUE CAMACHO, Individually and on
18 behalf of other members of the general public
similarly situated,

19 Plaintiff,

20
21 v.

22 SIRIUS PROPERTY MANAGEMENT
INC., a California Corporation; INSPERITY,
23 INC., a Texas Corporation; INSPERITY PEO
SERVICES, LP, a Delaware Limited
24 Partnership; and DOES 1-10, inclusive

25 Defendants
26
27
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Case No. 37-2016- 00006628-CU-OE-CTL

**JOINT STIPULATION & [PROPOSED]
ORDER TO DISMISS PLAINTIFF'S
PAGA REPRESENTATIVE CLAIMS**

Dept.: C-75
Judge: Hon. Richard E.L. Strauss

Complaint Filed: February 26, 2016
Amended Complaint: March 28, 2016

1 IT IS HEREBY STIPULATED by and between the parties hereto, through their respective
2 counsel of record, as follows:

3 1. JOSUE CAMACHO (“Plaintiff”) filed his original complaint in this action on
4 February 26, 2016. A First Amended Complaint was filed against Defendants SIRIUS PROPERTY
5 MANAGEMENT INC. (“Sirius”); INSPERITY, INC.; and INSPERITY PEO SERVICES, LP (the
6 “Insperity Defendants”) in the San Diego Superior Court on October 3, 2016. Plaintiff filed his
7 action both individually and on behalf of aggrieved employees under the Private Attorneys General
8 Act (“PAGA”). In his Complaint, Plaintiff alleges, among other allegations, that Defendants failed
9 to (1) provide meal and rest periods, (2) pay the minimum wage and overtime for all hours worked,
10 (3) provide accurate wage statements and (4) reimburse all business expenses. If the case had not
11 settled, Plaintiff considered amending his complaint to assert additional claims in his individual
12 capacity.

13 2. A Settlement was recently reached between counsel for Plaintiff and counsel for
14 Insperity Defendants. Because Defendant Sirius is no longer doing business, it is not a signatory,
15 but is intended to be a third-party beneficiary to the settlement. The settlement between all
16 Defendants and Plaintiff, as an individual and a PAGA representative (combined, the “Parties”),
17 resolves all outstanding issues and obligations between the Parties.

18 3. The settlement was made after counsel for both parties exchanged discovery, thoroughly
19 reviewed all available evidence and after arm’s-length bargaining by the parties. This Settlement
20 effectuates a resolution of this matter in its entirety, including all individual and PAGA claims.
21 (Declaration of Eric K. Yaeckel (“Yaeckel Decl.”), ¶ 2.)

22 4. The Parties now seek this Court’s approval of the Settlement Agreement. The
23 Parties recognize that in accordance with Labor Code Section 2699(l)(2), Court approval is
24 required in the event of a settlement of a PAGA action on a representative basis. However, as
25 explained in *Arias v. Superior Court*, 46 Cal.4th 969 (2009), parties are not obligated to follow the
26 class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA
27 settlement thorough a motion for preliminary or final approval. Instead, in order to comply with

the requirements of Labor Code Section 2699(l)(2), the Parties have submitted this Joint Stipulation to the Court identifying the key terms of this Settlement Agreement.

5. Pursuant to the Agreement, the Defendants have agreed to pay to Plaintiff, PAGA Members (defined below), and their attorneys a total Settlement Payment in the amount of Twenty Thousand Dollars (\$20,000.00).

6. Ten Thousand Dollars (\$10,000.00) shall be allocated to Plaintiff as payment for his individual employment law claims and for the waiver of all such claims.

7. Seven Thousand Three Hundred (\$7,300.00) shall be allocated to Plaintiff's counsel for an award of reasonable attorney's fees and costs under California Labor Code section 2699(g) and for their representation of Plaintiff with respect to his individual claims.

8. The Parties have agreed that a civil penalty amount of Two Thousand Seven Hundred Dollars (\$2,700.00) ("PAGA Penalties Payment") of the Settlement Payment shall be paid by Defendants under California Labor Code § 2698 *et seq.* of the PAGA. Pursuant to Labor Code Section 2699(i), civil penalties recovered by aggrieved employees shall be distributed in the amount of seventy-five percent (75%) to the State of California Labor and Workforce Development Agency ("LWDA") and twenty-five percent (25%) to the aggrieved employees. Thus, 75% of the PAGA Penalties Payment (\$2,025.00) shall be sent by Defendants directly to the LWDA and the remaining 25% (\$675.00) shall be distributed evenly (\$75.00 each) by Defendants directly to the 9 other nonexempt employees who are the PAGA Members. For purposes of the Settlement Agreement and this Stipulation, the term "PAGA Members" is defined as all non-exempt employees who were employed by Defendants within the one year limitations period of February 26, 2015 through to the date the Court approves this Settlement ("Covered Period").

9. Defendants have confirmed there are 9 total PAGA Members who worked during the Covered Period. The Parties agree that the allocation of PAGA penalties is fair and reasonable. The Parties negotiated in good faith for a comprehensive settlement of all PAGA-related claims and the Parties believe that the allocation of \$2,700.00 to PAGA penalties out of the total Settlement Payment of \$20,000 is reasonable and in line with PAGA penalties that have been

1 approved by courts in other cases. *See e.g., Chu v. Wells Fargo Investments, LLC*, No. C 05–4526
2 MHP, C 06–7924 MHP, 2011 WL 672645, at *1 (N.D. Cal. Feb. 16, 2011) (approving PAGA
3 settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement);
4 *Navarro v. Ordaz Cultured Marble & Onyx, Inc., et al.*, No. C 13-00847 LB (N.D. Cal. February
5 23, 2015) (approving PAGA settlement payment of \$15,000 to the LWDA out of the total
6 settlement amount of \$76,825). The PAGA penalties payment will be distributed evenly among all
7 non-exempt employees who worked during the PAGA Period.

8 10. The PAGA Penalties Payment has been allocated a discounted value to account for
9 the Court’s discretion to reduce such penalties under Labor Code section 2699(e)(2). *See e.g.,*
10 *Fleming v. Covidien Inc.*, 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA
11 penalties by 82%). Section 2699(e)(2) authorizes a reduction in PAGA penalties if the penalty
12 amount would be “unjust, arbitrary and oppressive, or confiscatory.” The Parties agree, at this
13 time, that a full penalty award against Defendants would be unjust, arbitrary, oppressive, and
14 confiscatory because during the period in which Plaintiff alleges the California Labor Code
15 violations occurred, some of alleged labor code violations resulted from an inadvertent errors and
16 Defendants have also taken steps to fix the challenged policies and practices. Based on the
17 foregoing, the Parties believe a reduction in PAGA penalties is warranted under Section
18 2699(e)(2). The Insperity Defendants further deny that they are “employers” for purposes of any of
19 the claims alleged in the Complaint.

20 11. In exchange for Plaintiff’s receipt of the Individual Settlement Payment, Plaintiff
21 will: (1) release all claims against Defendants Released Parties (as defined in the Settlement
22 Agreement), (2) agree to a California Civil Code section 1542 waiver, and (3) agree not to pursue
23 future employment with Defendants.

12. Upon approval by the Court of this Settlement, each PAGA Member (including Plaintiff) shall, for the Covered Period, fully release and forever discharge Defendants' Released Parties from any and all claims, causes of action, damages, wages, benefits, expenses, penalties, interest, debts, liabilities, demands, obligations, attorneys' fees, costs, and any other form of relief or remedy in law, equity, or whatever kind or nature that were asserted or could have been asserted pursuant to Labor Code Section 2699 for civil penalties under California Labor Code sections 558 and 2699 *et. seq.* predicated on the alleged California Labor Code violations asserted in Plaintiff's Complaint.

13. The parties submitted the Settlement Agreement to the LWDA pursuant to Labor Code, section 2699, subdivision (l)(2).

14. Pursuant to Labor Code, section 2699, subdivision (l)(2), the Court must review and approve any settlement of any civil action filed pursuant to Section 2699, *et seq.*

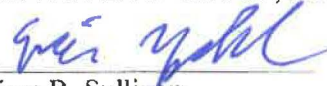
15. If, for any reason, this Joint Stipulation and/or the terms of the Settlement are not approved by the Court, this Joint Stipulation shall have no force and effect and will not be admissible in any proceeding for any purpose or with respect to any issue, substantive or procedural.

THEREFORE, IT IS HEREBY STIPULATED by and between Plaintiff and Defendants, through their respective counsel, as follows:

1. The Settlement Payment shall be distributed as described herein;
2. Plaintiff's counsel shall receive attorneys' fees pursuant to the Settlement Agreement;
3. Plaintiff shall dismiss Plaintiff's representative and individual claims pursuant to PAGA *with prejudice*.

1 DATED: January 11, 2018

SULLIVAN LAW GROUP, APC


William B. Sullivan

Eric K. Yaeckel

Attorneys for Plaintiff Josue Camacho

5 DATED: January 11, 2018

FISHER & PHILLIPS, LLP


Aaron F. Olsen, Esq.

Attorneys for Defendants

INSPERITY, INC. and INSPERITY

PEO SERVICES, LP

1 **[PROPOSED] ORDER**

2 Defendants Insperity, Inc. & Insperity PEO Services, LP and Plaintiff, as an individual and
3 as Private Attorneys General Act (“PAGA”) representative, (combined, the “Parties”) voluntarily
4 entered into and executed a Confidential Settlement Agreement and Release of all Claims
5 (“Settlement Agreement”) to settle Plaintiffs’ individual claims. As part of that settlement Plaintiff
6 seeks to dismiss his representative claims pursuant to California Labor Code, section 2699, et seq.
7 Based on the Joint Stipulation of Settlement and the Declaration of Eric K. Yaeckel, and for good
8 cause shown, the Court rules as follows:

9
10 IT IS HEREBY ORDERED THAT:

- 11 1. The Parties’ Settlement Agreement is approved.
12 2. Plaintiff’s Representative PAGA claims are dismissed without prejudice.
13 3. Plaintiff maintains individual claims and is to file a dismissal of these claims, with
14 prejudice, once the terms of the Settlement Agreement are satisfied.
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16 IT IS SO ORDERED.

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18 Date: _____

19 Hon. Richard E.L. Strauss
20 Judge of the San Diego County Superior Court
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