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HELEN PEREZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

Janet Adams	) Case No. BC622689
	)
Plaintiff,	) STIPULATION AND APPLICATION
	) FOR APPROVAL OF PRIVATE
v.	) ATTORNEY GENERAL ACT (PAGA)
	) PENALTIES SOUGHT AS PART OF
Space Exploration Technologies Corp.;	) INDIVIDUAL SETTLEMENT
and DOES 1- 50, inclusive,	) AGREEMENT
	)
Defendant.	) [Filed concurrently with Proposed Order
	) approving PAGA settlement and
	) declaration of Jonathan J. Delshad]
	)
	) Assigned to Hon. Monica Bachner
	) Dept 71.

HELEN PEREZ (“**Plaintiff**”), only on her own behalf, and DEFENDANT Space Exploration Technologies Corp. (“**Defendant**”) (collectively the “**Parties**”) hereby stipulate and apply for approval of Private Attorney General Act (PAGA) penalties sought as part of their settlement agreement.

I. THE PRIVATE ATTORNEYS GENERAL ACT OF 2004

The California Labor & Workforce Development Agency (“**LWDA**”) and its constituent departments and divisions are authorized to assess and collect civil penalties for specified violations of the Labor Code committed by an employer. (See, Labor Code §2699(a)). With a stated goal of improving enforcement of existing Labor Code obligations, the Legislature

1 adopted the Labor Code Private Attorneys General Act of 2004 (“PAGA”), codified at Labor
2 Code sections 2698 et seq., permitting, as an alternative, an aggrieved employee to initiate a
3 private civil action for “civil penalties” which were previously enforceable only by the State's
4 labor law enforcement agencies. (Labor Code §2699; *Caliber Bodyworks, Inc. v. Superior Court*
5 (2005) 134 Cal.App.4th 365, 377). Before an employee may file an action seeking to recover
6 such “civil penalties” for violations of any of the Labor Code provisions enumerated in section
7 2699.5, however, he or she must comply with PAGA’s administrative procedures as set forth in
8 Labor Code section 2699.3(a), which include providing notice to the LWDA and the employer
9 and waiting a prescribed period of time to permit the LWDA to investigate and to decide
10 whether to cite the employer for the alleged violations. (*Caliber Bodyworks, supra*, 134
11 Cal.App.4th at 370; *see also, Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330). If the
12 LWDA declines to pursue the penalties, the employee may proceed in Court.

13 The LWDA has not provided much guidance as to the governmental enforcement
14 activities before PAGA, nor after PAGA. As the underlying facts and procedure questions
15 presented in *Dunlap* and *Caliber Bodyworks* reveal, many issues are currently still being
16 resolved by appellate courts as to the parameters of this enforcement statute. Any PAGA
17 penalties recovered by an employee, however, do not entirely belong to the employee. Instead,
18 PAGA requires that 75% of the recovered penalties must be paid to the LWDA, while the
19 remaining 25% may be retained by the employee who prosecuted the claim. (Labor Code
20 §2699(i)). Where claims for PAGA penalties are settled by the parties, the parties must obtain
21 Court approval of the settlement. (Labor Code §2699(1)).

22 **II. PLAINTIFF EXHAUSTED ADMINISTRATIVE CLAIMS UNDER PAGA**

23 The PAGA statute provides LWDA with limited time frames within which to review a
24 notice or investigate and cite an employer for alleged violations before an aggrieved employee
25 may file suit. Although the statute directs LWDA to send a notice when it decides not to
26 investigate a notice or issue a citation, the statute also authorizes the aggrieved employee to file
27 suit if the LWDA sends no notification within specified time limits. (Labor Code §2698-

1 2699.5). Here, Plaintiff made her administrative claims for PAGA penalties with a certified
2 letter to the LWDA dated March 3, 2016. (See Declaration of Jonathan J. Delshad at ¶ 5) The
3 LWDA never responded to Plaintiff's notice nor ever notified Plaintiff of a decision to
4 investigate claims on Plaintiff's behalf per Labor Code § 2699.3(a). Therefore, due to the lapse
5 of the statutory 33-day waiting period to receive a response from LWDA, Plaintiff exhausted all
6 her administrative claims and remedies under PAGA before filing suit with this Court on June 7,
7 2016.

8 **III. PLAINTIFF'S PAGA CLAIMS WERE STAYED PENDING ARBITRATION AND**
9 **SUBSEQUENTLY SETTLED AFTER A HEARING ON THE MERITS.**

10 Plaintiff's Complaint in this action generally seeks the recovery of all penalties available
11 under the law, including claims for penalties under PAGA. On April 19, 2017 the Court granted
12 Defendant's motion to compel all of Plaintiff's claims to arbitration other than the PAGA
13 claims.

14 The Parties completed an arbitration hearing and settled all claims for penalties Plaintiff
15 arguably could have recovered under PAGA, prior to a ruling by the arbitrator after the hearing.

16 The Parties agreed pursuant to the settlement that the Plaintiff's PAGA claims, but not
17 those of any other employee(s), were being released, for a settlement value of \$100. Plaintiff
18 will send the LWDA its payment upon receiving approval from this Court.

19 Several factors were considered in arriving at this settlement value: (1) Defendant denies
20 any liability in this matter; (2) Defendant denies any violations of any claims, including Labor
21 Code section 230 (regarding jury duty leave retaliation), that would have entitled Plaintiff to
22 recover penalties under PAGA; (4) the underlying facts of the case are in dispute; (5) there will
23 be significant investments of time and expense by the Parties to litigate the claims for penalties
24 under PAGA; (6) there is no guarantee of an outcome on the PAGA claims for either Party at
25 trial; (7) the resolution of this dispute will be delayed until trial, and, regardless of the outcome,
26 there is a significant of risk of further delay due to appeals; (8) the case law interpreting the
27 PAGA is still sparse and subject to change; (9) any award of penalties under PAGA is within the
28

1 discretion of the trial court; and (10), to date, the Parties have not identified any other potential
2 PAGA class members.

3 **IV. THE PARTIES REQUEST COURT APPROVAL OF THE SETTLEMENT OF**
4 **PLAINTIFF’S PAGA CLAIMS**

5 The Parties are required to obtain the trial court approval of the settlement of any penalties
6 sought as part of a proposed settlement of PAGA claims. (Labor Code §2699(1)). For all the
7 reasons cited herein, the Parties agreed to settle Plaintiff’s claims for penalties under PAGA. All
8 counsel believe that the proposed settlement is to the advantage of their respective clients. The
9 LWDA was given the opportunity to investigate this matter after being given proper notice, but
10 declined to do so. The only directions the PAGA and LWDA provide are that any settlement of
11 the PAGA claims must be approved by the Court, and 75% of the consideration received for the
12 PAGA penalties be paid to the LWDA. For all these reasons, the Parties respectfully request the
13 Court approve the settlement of the claims for penalties under PAGA, including the agreement
14 for Plaintiff to pay 75% of the settlement amount to the LWDA.

15 **V. CONCLUSION**

16 Based on the foregoing, the Parties are confident that an appropriate sum has been
17 allocated to the disputed value of the “discretionary” PAGA penalties sought by Plaintiff, if any.
18 Thus, based on the various factors discussed above, and to avoid further litigation of this matter,
19 the Parties respectfully request the Court approve the \$100 settlement of the claims for the
20 PAGA penalties.

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2 **IT IS SO STIPULATED.**

3 Date: 7/1/18

LAW OFFICES OF JONATHAN J.
DELSHAD, P.C,

4 By: 
5 Jonathan Delshad
6 Attorneys for Plaintiff

7 Date: _____

FOX ROTHSCHILD LLP

8 By: _____
9 Alexander Hernaez
10 Andrew Russell
11 Attorney for Defendant SpaceX
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