

AEGIS LAW FIRM, PC

SAMUEL A. WONG, State Bar No. 217104

KASHIF HAQUE, State Bar No. 218672

JESSICA L. CAMPBELL, State Bar No. 280626

9811 Irvine Center Drive, Suite 100

Irvine, California 92618

Telephone: (949) 379-6250

Facsimile: (949) 379-6251

Email: jcampbell@aegislawfirm.com

Attorneys for Plaintiff Van Chau, individually,
and on behalf of all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

VAN CHAU, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

ST. JOSEPH HEALTH SYSTEM HOME
HEALTH AGENCY, LLC; PROVIDENCE
HEALTH AND INSURANCE SERVICES,
INC.; and DOES 1 through 20, inclusive,

Defendants.

Case No. 30-2022-01268431-CU-OE-CXC

Assigned for all purposes to:

Judge Randall J. Sherman

Dept. CX-105

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

Date: March 14, 2025

Time: 10:00 a.m.

Dept.: CX105

1 **I. INTRODUCTION**

2 Plaintiff Van Chau (“Plaintiff”) provides this Supplemental Brief in response to the Court’s
3 tentative ruling on Plaintiff’s Motion for Preliminary Approval of Class Action Settlement
4 (“Motion”). Concurrently with this Brief, Plaintiff submits the Declaration Of Jessica L. Campbell
5 In Support Of Supplemental Brief In Support Of Plaintiff’s Motion For Preliminary Approval Of
6 Class Action Settlement (“Campbell Decl.”) with the following exhibits:

- 7 • Exhibit 1: Amendment to Class Action and PAGA Settlement Agreement and Class Notice
8 is attached to the Campbell Decl. as **Exhibit 1**, with the Class Notice included as **Exhibit**
9 **A**.
- 10 • Exhibit 2: Redlined Class Notice.
- 11 • Exhibit 3: Class Member Opt-Out Form.
- 12 • Exhibit 4: Confirmation email from LWDA confirming submission of the Amendment to
13 Class Action and PAGA Settlement Agreement and Class Notice to the LWDA.

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

15 **A. The Settlement.**

16 **Issue 1: Estimated High, Low, Average Individual Class Payments**

17 **“The motion does not provide the court with the estimated high, low or average**
18 **individual payments to the class members. The estimated average payment must be provided**
19 **for preliminary approval, but if the high and low estimated payments are not available at**
20 **this time, they must be provided in the motion for final approval.”**

21 **Issue 1 Response:**

22 Plaintiff’s counsel estimates the average payment will be around \$1,500, lowest around
23 \$24 (if a class member worked one week), and highest around \$7,752 (if a class member worked
24 the entire class period). (Campbell Decl., ¶ 2-6.)

25

26 **Issue 2: Escalator Clause**

27 **“The Class Period is defined as January 9, 2018 through March 18, 2024. The**
28 **escalator clause in §3.1.1 of the settlement agreement, however, provides for defendant’s**

1 option of either an increase in the settlement amount or a change to the Class Period such
2 that some of the class members who receive the class notice will no longer be included in the
3 settlement. This court will not approve a settlement that results in class members being told
4 they are in the class but later being told they are not in the class. Thus, defendant will have
5 to either rely on or take another look at its workweek estimate as of nine months ago, March
6 18, 2024, or select the increased payment option. If the parties want to preserve the option
7 calling for a reduction of the class period, rather than just an increase in the settlement
8 amount, they must determine if the escalator clause applies before preliminary approval,
9 and then change the class period before preliminary approval and the mailing of the class
10 notice, as §3.1.1 also provides.”

11 **Issue 2 Response:**

12 Defendant confirmed the escalator clause was not triggered and thus the Class Period will
13 end March 18, 2024. The Amendment to the Settlement thus now provides that if the escalator is
14 triggered due to mistake, disputes, or any other reason, Defendant must pay the escalator and will
15 not have an option to shorten the Class Period. Specifically, Section § 3.1.1 is amended to read as
16 follows:

17 Escalator of Gross Settlement Amount. This settlement is based on Plaintiff’s
18 understanding (based on information supplied by Defendant) that Class Members worked
19 approximately 45,750 Workweeks between the start of the Class Period and the date of the
20 mediation (December 18, 2023), and that the number of Workweeks most likely will
21 increase between the date of the mediation and the close of the Class Period. If it is
22 determined that the number of workweeks during the Class Period exceeds 50,325 (45,750,
23 plus 10% of 45,750), then, at Defendant’s option, either (a) the Gross Settlement Amount
24 will increase in proportion to the increased percentage - for example, if such increase in
25 workweeks is 12% over 45,750 workweeks, the Gross Settlement Amount will increase by
26 2%, or (b) the Class Period shall end as of the date the Workweeks during the Class Period
27 reaches 45,750. Defendant has determined that the workweeks in the Class Period (i.e.,
28 through March 18, 2024) do not exceed 50,325. As such, the condition precedent of the

1 election provision in this paragraph is not met and no election need be made. If the
2 condition precedent is met after preliminary approval due to mistake or workweek disputes
3 or any other reason, option (a) will be automatically invoked, and Defendant will not have
4 the right to exercise option (b).

5 (See Campbell Decl., Exhibit 1 at § 3.1.1.)

6
7 **Issue 3: PAGA release language.**

8 **“The PAGA release language used in the settlement agreement in §1.40 and in the**
9 **class notice in §3.10 is overbroad. The release must be limited to claims that are asserted in**
10 **the operative pleading or that could be asserted based on the facts alleged in the operative**
11 **pleading. The “arising out of” language is overbroad and must be deleted. Amaro vs.**
12 **Anaheim Arena Management, LLC (2021) 69 Cal. App. 5th 521, 537-38.”**

13 **Issue 3 Response:**

14 The Parties have amended Section §1.40 and §3.10 to delete “arising out of”. They read as
15 follows:

16 Section 1.40 now reads as follows: “Released PAGA Claims” means all claims for civil
17 penalties under PAGA that were alleged in the Complaint and/or in the PAGA Notice, or that
18 reasonably could have been alleged in the Complaint and/or the PAGA Notice, based upon the
19 facts alleged in the Complaint or in the PAGA Notice.

20 Section 3.10 now read as follows: After the Court’s judgment is final, and Defendant has
21 paid the Gross Settlement (and separately paid the employer-side payroll taxes), Plaintiff as a
22 representative of the State of California and on behalf of the LWDA and as representative of the
23 PAGA Group, fully and finally releases the Released Parties from all claims for civil penalties
24 under PAGA that was alleged in the operative Complaint and/or in the PAGA Notice, or that
25 reasonably could have been alleged in the operative Complaint and/or the PAGA Notice, based
26 upon the facts alleged in the operative Complaint or in the PAGA Notice, including for violations
27 of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5,
28 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800 and 2802 during the PAGA Period.

(See Campbell Decl., Exhibit 1 at § 1.40, Exhibit 2 at 3.10.)

Issue 4: Administrator resolution of any workweek dispute language.

“The provision in §6.8 of the settlement agreement that the Administrator’s resolution of any workweek dispute “shall be final and not appealable or otherwise susceptible to challenge” must either be deleted, or be followed by language such as, “subject to §6.11.3, which provides, ‘The Court has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods.’”

Issue 4 Response:

Section § 6.8 is amended to read as follows: Challenges to Calculation of Workweeks and Pay Periods. Each Class Member shall have until the Response Deadline to challenge the number of Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. For these challenges, Defendant's records will be presumed accurate. If a Class Member disputes Defendant's records, he or she will have the burden of proof to establish otherwise with documentary evidence. The Court has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator’s determination of the challenges.

(See Campbell Decl., Exhibit 1 at § 6.8)

B. Class Notice.

Issue 5: Class Notice Format.

“The pages of the class notice must be numbered beginning with 1.”

Issue 5 Response:

1 Plaintiff has numbered the class notice to begin at 1. (See Campbell Decl., Exhibit A)

2
3 **Issue 6: Class Notice Spelling.**

4 “On page “25” of the class notice, in the second box, on line 1, change “op-out” to
5 “opt-out.”

6 **Issue 6 Response:**

7 On page “25” of the class notice, in the second box, on line 1, Plaintiff has changed “op-
8 out” to “opt-out. (See Campbell Decl., Exhibit 2 at p.2.)

9
10 **Issue 7: Exclusion Form.**

11 “Rather than having class members prepare their own optout requests, the class
12 notice must include an exclusion form that class members can complete and submit. The
13 form should be referenced in the class notice.”

14 **Issue 7 Response:**

15 The Parties have created an exclusion form called “Opt-Out Form” that is now referenced
16 in the Class Notice. (See Campbell Decl., Exhibit 3; *see also* Exhibit 2 at pp. 1, 4, 7)

17
18 Dated: February 24, 2025

AEGIS LAW FIRM, PC

19 By /s/ Jessica L. Campbell

20 Jessica L. Campbell
21 Attorneys for Plaintiff Van Chau
22
23
24
25
26
27
28