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Tasja Gray

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

TASJA GRAY, on behalf of herself and all
aggrieved employees,

Plaintiffs,

v.

G&M HIRE ENTERPRISES LLC, DR. ROB
FARMS INC., and DOES 1 to 100,

Defendants.

Case No. CVPS2204289

**SUPPLEMENTAL DECLARATION OF
MANNY STARR IN SUPPORT OF
PLAINTIFF'S MOTION FOR
APPROVAL OF PAGA SETTLEMENT**

Date: July 19, 2023

Time: 8:30 a.m.

Dept.: PS2

Complaint Filed: October 28, 2022

Trial: None set

1 **SUPPLEMENTAL DECLARATION OF MANNY STARR**

2 I, Manny Starr, declare as follows:

3 1. I am an attorney at law duly admitted to practice before all courts in the State of
4 California and am a member of the law firm Frontier Law Center. I am one of the attorneys of
5 record for Plaintiff Tasja Gray (“Plaintiff”), on behalf of herself and all aggrieved employees,
6 in the above-entitled action. I have personal knowledge of the matters set forth herein, and if
7 called upon as a witness to testify thereto, I could and would competently do so.

8 2. This declaration is intended to respond to the court’s June 16, 2023 case
9 management order (“CMO”) and June 21, 2023 minute order. For clarity, all matters required
10 to be addressed by the order are addressed herein, regardless of whether or not they were
11 addressed in the original declaration or other documents in support of the Motion for
12 Approval.

13 3. Attached as **Exhibit A** to this declaration is a true and correct copy of the
14 executed settlement agreement, as amended. (CMO Section 2.a.)

15 4. This settlement was entered into with the assistance of neutral mediator Linda
16 Quinn. (CMO Section 2.b.)

17 5. On July 6, 2023 I uploaded a copy of the settlement agreement, as amended, to
18 the LWDA website at [https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)
19 [Attorneys-General-Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html). (CMO Section 2.c)

20 **MAXIMUM PAGA PENALTIES**

21 6. The alleged violations are as follows: (CMO Section 3.a.)

- 22 a. Rest Break Violations: Plaintiff alleges that Defendant violated Labor Code
23 Section 226.7 by not providing the Aggrieved Employees with rest breaks in
24 which they were relieved of all duty. Plaintiff alleges specifically that
25 Defendants required the Aggrieved Employees to remain on site during
26 breaks, and even when permitted, discouraged them from doing so by
27 requiring them to go through a security checkpoint, a process that would take
28 significant portions of their break to go through.

- 1 b. Meal Break Violations: Plaintiff alleges that, due to the same policy of
2 prohibiting employees from leaving and discouraging them from doing so by
3 requiring their use of the checkpoint, Defendant also prohibited the
4 Aggrieved Employees from getting legally complaint meal breaks, in
5 violation of Labor Code § 558.
- 6 c. Unpaid Wages: Plaintiff alleges that the Aggrieved Employees were not paid
7 for the time, either prior to their shift or after, that they had to spend getting
8 through the employer mandated security checkpoints. During this time,
9 Plaintiff alleges, the Employees were still under Defendants control, but were
10 not paid, in violation of Labor Code section 1197.1.
- 11 d. Wage Statement Penalties: Plaintiff alleges that the wage statements
12 provided by Defendant violate Labor Code Section 226. Since Defendant
13 was recording neither the time spent going through the checkpoint, nor the
14 time spent restricted on site during meal breaks as time worked, the wage
15 statements did not correctly list the total number of hours worked.
- 16 e. Waiting Time Penalties: Plaintiff alleges that since Defendant did not pay the
17 wages owed at all, it stands to reason that for those employees who were
18 terminated or quick during the relevant period, Defendant could not have
19 paid all wages due and payable within the timeframes allowed by Labor
20 Code section 201, 202, and 203.
- 21 f. Unreimbursed Work Expenses: Labor Code section 2802 requires employers
22 to reimburse their employees for all expenses reasonably and necessarily
23 incurred in execution of their duties. Plaintiff Alleges that Defendant
24 required the Aggrieved Employees to provide protective sleeve and eyewear,
25 but did not reimburse them for doing so.

26 7. Based on information provided by Defendant through informal discovery leading
27 up to mediation, there are 161 Aggrieved Employees. These Aggrieved Employees worked an
28 estimated 3,636 aggregated total pay periods through May 5, 2023. This amount was taken by

extrapolating out from the data provided by Defendant, which was current through January 20, 2023. (CMO Section 3.b.)

8. Plaintiff estimates Defendant's maximum liability for PAGA penalties to be \$1,304,800. (CMO Section 3.c). The breakdown of that is as follows:

- Rest Break Violations: **\$363,600**
- Meal Break Violations: **\$181,800**
- Off the Clock Work: **\$363,600**
- Wage Statement Penalties: **\$363,600**
- Waiting Time Penalties: **\$16,100**
- Unreimbursed Word-Related Expenses: **\$16,100**

9. Given the nature of Plaintiff's' claims, ascertaining the total amount likely to be proven at trial is a difficult prospect. Plaintiff alleges that Defendant's policies, rather than individual acts, give rise to the liability it faces. This means that liability is likely to be an all-or-nothing prospect; if Defendant is found to have the alleged policy and or practice, and that policy or practice is deemed to be unlawful, then liability for that violation is likely to be for the full maximum amount (subject to reduction pursuant to Labor Code section 2699 subd. (e)(2)), since it was applied uniformly. On the other hand, if a policy or practice is held to be lawful, or the Court determines that that Defendant did not have that policy or practice, or had an unlawful policy but didn't enforce it, then it is likely that no penalties for that violation will be awarded at all. (CMO Section 3.d.)

10. Defendants presented some strong factual defenses in this case. First, Defendant contends that the security check point was not owned, operated, or controlled by Defendant. Instead, the check point was actually just a guard house to the business park in which Defendant's employees worked. Thus, Defendant argued that passing through the guard house was simply part of an employee's commute to work for which no compensation was due. Second, Defendant contends that the security checkpoint takes little to no time to pass through and, as such, is not an impediment to employees coming and going during their shifts for meal and/or rest periods. Third, Defendant contends that the security guards often recognize

1 employees and wave them through without requiring them to stop at all. Furthermore,
2 Defendant contends that even when the guard does not recognize the employee, the employee
3 need only hold up their badge as they drive by and the guard will wave them through, such that
4 the employee does not even need to stop. Fourth, Defendant contends that the guard house to
5 the business park was not manned for the majority of the relevant time frame and, thus, the
6 gates to the business park were open to entry and exit without any delay. Fifth, once employees
7 arrived at the parking lot for the building in which employees performed work, employees
8 need only scan their badge on a security door to be granted immediate entry and that there was
9 no pat-down or other security protocol in place that constituted compensable work time.
10 Defendant has shown Plaintiff surveillance video footage that they purport demonstrates that
11 this is true at least some of the time. (CMO Section 3.d.)

12 11. In the informal discovery completed in the case so far, no documents
13 demonstrate that Defendant was aware of the delays at the checkpoint. Further, Defendant
14 provided an employee handbook in informal discovery that contained a meal and rest break
15 policy. That policy (which Plaintiff contends was never distributed to Plaintiff or the
16 employees she worked with) states that employees may leave the worksite during lunch breaks,
17 from which, absent testimony to the contrary, it could be inferred that Defendants were not
18 aware that lower-level supervisors were telling employees otherwise. (CMO Section 3.e.)

19 12. If the Court were to find that the violations were not knowing and intentional for
20 these reasons, it would be unjust and oppressive to nevertheless assess the maximum penalty
21 for these violations. (CMO Section 3.f.)

22 13. The agreed upon penalties were arrived at via mediation with mediator Linda
23 Quinn. The total amount of \$50,000 comes to a penalty of about \$13.75 per pay period
24 ($\$50,000 / 3,636 \text{ pay periods} = \13.7513). (CMO Section 3.g.)

25 14. The law is somewhat unsettled as to whether or not PAGA penalties may be
26 “stacked” i.e., whether more than one PAGA penalty may be applied for the same pay period.
27 Our maximum penalty estimate above assumes penalty stacking. If penalties cannot be
28 stacked, the maximum PAGA penalty is instead \$363,600, or \$100 per pay period. Given the

1 defenses presented by Defendant, I believe \$13.75 per pay period is a fair compromise. (CMO
2 Section 3.h.)

3 **ATTORNEY FEES AND COSTS**

4 15. Attached as **Exhibit B** is a true and correct copy of our firm's updated billable
5 hours for this case. (CMO Section 4.) Our rates listed are reasonable based on the experience
6 of the attorneys. Our firm did not split fees with any other firms.

7 16. Our fee of \$16,666 represents about one third of the total settlement. This is a
8 common rate for fee agreements like ours, where we agreed to take the case on a contingency
9 basis. Further, it is significantly less than our lodestar amount of over \$43,000. (CMO Section
10 4.)

11 17. Attached as **Exhibit C** is a true and correct copy of our firms expenses in this
12 case.

13 **INDIVIDUAL SETTLEMENT**

14 18. In addition to the PAGA settlement, Plaintiff simultaneously entered into a
15 confidential individual settlement with Defendant. The individual settlement was entered into
16 to resolve (in addition to the claims which form the predicate of Plaintiff's PAGA claims)
17 Plaintiff's' claims against Defendants for alleged FEHA violations. Specifically, Plaintiff
18 alleges that Defendants wrongfully failed to promote, then wrongfully terminated, Plaintiff on
19 the basis of her race, sex, and or sexual orientation. (CMO Section 5a.) These claims were not
20 brought in court due to the presence of an arbitration agreement, which Plaintiff and
21 Defendants agree covers Plaintiff's individual claims.

22 19. Based on Plaintiff's rate of pay and assuming approximately two years of lost
23 wages, Plaintiff estimates her economic damages for her wrongful termination claim to be
24 about \$48,000. Plaintiff also estimates her emotional damages would be valued at about
25 \$50,000. Further, Plaintiff's individual claims are estimated at being \$3,255 for meal break
26 penalties, \$3,255 for rest break penalties, \$4,080 in waiting time penalties, and \$5,150 in wage
27 statement penalties. In addition, Plaintiff would be entitled to recover unpaid wages including
28 overtime pay currently estimated to be just under \$1,000 (assuming approximately 10 minutes

1 per shift at her final rate of pay). (CMO Section 5.b.) Attorney fees and costs would also have
2 been recoverable.

3 20. Estimating the total amount that could reasonably be received at trial is difficult
4 for the individual claims for the same reason it is difficult for the PAGA claims – many of the
5 claims are all-or-nothing. Either Plaintiff’s time passing through the security checkpoint is
6 compensable or it is not, and either Defendant told Plaintiff she was not free to leave on her
7 meal and rest breaks, or they did not. (CMO Section 5.c.)

8 21. The confidential individual settlement provides that Plaintiff will be paid
9 \$25,000 in exchange for the release of her FEHA claims and individual wage and hour claims.
10 A portion of that sum will be sent to our office for attorney fees and costs involved in the
11 individual claims, and the rest will be paid to Plaintiff. (CMO Section 5.c-d.)

12 22. Plaintiff is not requesting any enhancement, service, or incentive award from the
13 PAGA settlement (CMO Section 6.)

14 **NO PREJUDICE TO AGGRIEVED EMPLOYEES**

15 23. The Aggrieved Employees will not be prejudiced by this settlement or the
16 resulting dismissal. First, PAGA claims are owned by the State, and not by the Aggrieved
17 Employees, so they have no interest to be prejudiced. *See Turrieta v. Lyft*, (2021) 69
18 Cal.App.5th ,955 (review granted to resolve split of authority); *but see Moniz v. Adecco USA,*
19 *Inc.* 72 Cal.App.5th 56 (2021). Second, the release and proposed order only proprot to release
20 the PAGA claims held by the state, and do not release any claim any Aggrieved Employee
21 may have for any Labor Code violation they suffered in their own individual capacity. Third,
22 there do not appear to be any Aggrieved Employees who have relied on this action, as our
23 office has not communicated with any Aggrieved Employees, individually or as a class,
24 formally or informally, verbally or in writing, about the preparation, filing, or pendency of this
25 action. (CMO Section 7.) Fourth, the Aggrieved Employees will still receive payment out of
26 this settlement out of the 25% net recovery, pursuant to Labor Code Section 2699 subd. (i) on
27 a per pay period basis.
28

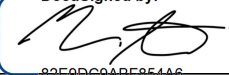
ADMINISTRATION

24. We did not seek bids from multiple administrators in this case. Rather, the first bid received, from Phoenix Settlement Administrators, was accepted. This is because the bid provide by Phoenix, which we received quickly after soliciting, was relatively low compared to similar bids we have received in the past for comparable administrations. (CMO Section 9a.)

25. We are filing, contemporaneously with this declaration, a declaration from the Settlement administrator in compliance with CMO Section 9 b.

I declare under penalty of perjury under the laws of California that the above is true and correct.

Executed on July 6, 2023 in Calabasas, California.

DocuSigned by:

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Manny Starr