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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SAN DIEGO**

16 KRISTI LYNN WHITE, individually and
17 on behalf of all others similarly situated,

18 Plaintiffs,

19 v.

20 EL CAJON POST ACUTE, LLC; and
21 DOES 1 through 20, inclusive,

22 Defendants.

Case No. 37-2022-00036585- CU-OE-CTL

Assigned for All Purposes to:

Judge Joel R. Wohlfeil

Dept. C-73

23 **PLAINTIFF'S NOTICE OF MOTION AND**
24 **MOTION FOR APPROVAL OF PAGA**
25 **SETTLEMENT**

26 Date: May 9, 2025

27 Time: 9:00 a.m.

28 Dept.: C-73

1 **TO THE COURT, ALL INTERESTED PARTIES, AND THEIR ATTORNEYS OF**
2 **RECORD:**

3 **PLEASE TAKE NOTICE** that on May 9, 2025 at 9:00 a.m., in Department C-73 of the
4 above-entitled Court, located at 330 W. Broadway San Diego, California 92101, Plaintiff Kristi
5 Lynn White (“Plaintiff”) will and hereby does move this Court for an Order granting approval
6 of the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* (“PAGA”)
7 representative action settlement entered into with Defendant El Cajon Post Acute, LLC.

8 This Motion will be based upon this Notice, the attached Memorandum of Points and
9 Authorities, the Declaration of Kristy R. Connolly, the Declaration of Kristi Lynn White, and
10 exhibits filed herewith, and any additional papers or arguments submitted on or before the
11 hearing on the Motion.

12
13 Dated: April 10, 2025

AEGIS LAW FIRM, PC

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15 By _____
16 Kristy R. Connolly
17 Attorneys for Plaintiff Kristi Lynn White
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Kristi Lynn White ("Plaintiff") seeks approval of a settlement of claims under
4 the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA")
5 against Defendant El Cajon Post Acute, LLC ("Defendant") in the amount of \$395,000. Plaintiff
6 alleges approximately 360 non-exempt, aggrieved employees who worked for Defendant were not
7 paid at least minimum wages for all hours worked, not paid proper overtime compensation, not
8 provided with meal periods and/or rest breaks or compensation in lieu thereof, not reimbursed
9 with business expenses, not provided with accurate wage statements, and were not paid all wages
10 owed timely or upon separation of employment.

11 Under Labor Code § 2699(1)(2), the Court must review and approve any proposed PAGA
12 settlement. Here, the proposed Settlement is sufficient to deter and punish future violations. The
13 Settlement is attached to the Declaration of Kristy R. Connolly ("Connolly Decl.") as **Exhibit 1**,
14 and the proposed letter to be sent to the aggrieved employees is attached thereto as **Exhibit A**.
15 Plaintiff now seeks this Court's approval of the Settlement terms.

16 **II. FACTUAL AND PROCEDURAL BACKGROUND**

17 On September 13, 2022, Plaintiff's counsel sent a letter to the California Labor &
18 Workforce Development Agency ("LWDA") via online submission and to Defendant via certified
19 mail regarding Defendant's alleged violations. *See* Connolly Decl., ¶ 3, Exhibit 2. The LWDA
20 did not respond to this notice within 65 days, indicating it did not intend to investigate, thus
21 allowing Plaintiff to file the instant lawsuit pursuant to Labor Code Section 2699.3(a)(2)(A). *Id.*

22 On September 13, 2022, Plaintiff filed a class action lawsuit, alleging that, Defendant
23 failed to: (1) pay minimum wages, (2) pay overtime wages, (3) provide lawful meal periods or
24 compensation in lieu thereof, (4) authorize or permit lawful rest breaks or provide compensation
25 in lieu thereof, (5) reimburse class members for necessary business expenses, (6) provide accurate
26 itemized wage statements, (7) timely pay all wages during employment, (8) pay all wages timely
27 upon separation of employment and, (9) abide by the requirements of California Business and
28 Professions Code Section 17200 *et seq.* Connolly Decl., ¶ 4.

1 Defendant then presented Plaintiff with an arbitration agreement that Plaintiff allegedly
2 signed. Connolly Decl., ¶ 5. Accordingly, Plaintiff dismissed her individual and class claims and
3 this action proceeded on a PAGA-only basis. *Id.*

4 Plaintiff then proceeded with formal discovery and served written requests seeking, *inter*
5 *alia*, documents and information related to the aggrieved employees and Defendant's wage and
6 hour practices. Connolly Decl., ¶ 6. After Defendant served its written responses, the Parties
7 agreed to place a hold on formal discovery and attend private mediation. *Id.*

8 In preparation of mediation, Defendant informally produced a 15% sample of aggrieved
9 employees' time and pay records. Connolly Decl., ¶ 7. Plaintiff's Counsel engaged an expert to
10 quantify the potential exposure using the time and payroll records, and then assessed the risks
11 associated with each of the claims meriting reductions in the likely recovery at trial. *Id.* The
12 Parties attended mediation with Jill Sperber on May 18, 2023, but were unable to come to an
13 agreement. *Id.*

14 Defendant then filed a Motion for Sanctions Pursuant to California Code of Civil
15 Procedure section 128.7 on the grounds that Plaintiff's claims lack merit based on Defendant's
16 belief that this action was brought outside of the statute of limitations. Connolly Decl., ¶ 8. After
17 the Parties fully briefed their respective positions, the Court denied Defendant's Motion without
18 prejudice on the grounds that Defendant had not obtained a substantive ruling finding that the
19 action is barred by the applicable limitations period. *Id.* Thereafter, Defendant then brought a
20 Motion for Summary Judgment on the issue of the statute of limitations. Connolly Decl., ¶ 9.
21 While Defendant's Motion for Summary Judgment was pending, Plaintiff also filed Motions to
22 Compel Further Responses, demanding discovery for the aggrieved employees, including contact
23 information, and time and pay records. *Id.* On April 5, 2024, the Court denied Defendant's
24 Motion for Summary Judgment. *Id.* On April 18, 2024, the Court granted Plaintiff's Motions to
25 Compel in part, ordering the Parties to narrow the scope of the requests. *Id.*

26 After these rulings, the Parties agreed to attend mediation again. Connolly Decl., ¶ 10.
27 The Parties attended a second mediation session with Jill Sperber on May 21, 2024. *Id.* While the
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1 action did not settle at mediation, the Parties continued to work with Ms. Sperber and eventually
2 accepted a mediator's proposal on July 10, 2024. *Id.* The Parties spent the next few months
3 negotiating the terms of the Settlement, which was finalized in May of 2024. *Id.* The
4 negotiations were adversarial, conducted at arm's length and tempered by the efforts of both
5 sides to serve the interests of their clients. *Id.*

6 Plaintiff initially filed for approval of the Parties' settlement on November 26, 2024.
7 Connolly Decl., ¶ 11. On January 24, 2025, the Court denied Plaintiff's motion for approval
8 without prejudice, finding that the escalator clause is not fair. *Id.* The escalator clause provided
9 that if the number of PAGA Pay Periods exceeds 20,416 by 10% (or 22,457), then the Gross
10 Settlement Amount will increase or Defendant would have the option to cut off the end date of the
11 PAGA Period. *Id.* After the Court's ruling, the Parties then reviewed the Aggrieved Employee
12 Data and confirmed that there are 20,765 Pay Periods worked during the PAGA Period. *Id.* As
13 such, the escalator clause would not be triggered. *Id.* The Parties then amended the settlement
14 agreement to remove the escalator clause, which is now being presented for the Court's approval.
15 *Id.* The Gross Settlement Amount and the PAGA Period are no longer subject to change. *Id.* On
16 April 10, 2025, Plaintiff submitted the amended Settlement and this Motion to the LWDA. *Id.* at ¶
17 12, Exhibit 3.

18 **III. PAGA REQUIREMENTS**

19 Based on the California Supreme Court's opinions in *Arias v. Superior Court*, 46 Cal. 4th
20 969 (2009), and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014),
21 Plaintiff can seek appropriate civil penalties as called for under PAGA on behalf of the State of
22 California and other similarly aggrieved employees without seeking class certification or meeting
23 the requirements of class certification (i.e. numerosity, typicality, commonality and adequacy).
24 As such, the class action two-step preliminary and final approval process is not required.

25 PAGA was enacted to allow enforcement of the Labor Code and recovery of penalties by
26 the State and by private individuals who have been aggrieved by their employers. The statute
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1 calls for 75% of any penalties recovered to be paid to California's LWDA and the remaining 25%
2 to the aggrieved employees (Cal. Lab. Code § 2699(i) (2016)).

3 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved
4 employee must first provide written notice to the LWDA and the employer of the particular Labor
5 Code violations the aggrieved employee alleges the employer has violated. *See* Cal. Labor Code §
6 2699.3(a)(1)(A) (2016). Once the LWDA notifies the aggrieved employee that it does not intend
7 to investigate the alleged violations, or if the LWDA does not respond within a certain time
8 period, the aggrieved employee is then allowed to proceed in a civil action against the employer
9 on behalf of the LWDA and all other similarly aggrieved employees. *See* Cal. Labor Code §
10 2699.3(a)(2)(A) (2016).

11 In 2009, the California Supreme Court considered the issue of whether an aggrieved
12 employee who brings a PAGA representative claim needs to meet class certification requirements.
13 *Arias*, 46 Cal. 4th at 976. After a substantial review of the legislative history of PAGA, the Court
14 held that an aggrieved employee's representative action brought on behalf of other aggrieved
15 employees against an employer for PAGA violations does not need to meet the requirements for
16 class certification. *Id.* at 975, 980-88. As the Court held, a plaintiff bringing suit under PAGA
17 does so as the proxy or agent of California's labor law enforcement agencies. *Id.* at 986. Because
18 the employee's PAGA action functions as a substitute for an action brought by the government
19 itself, a judgment in the PAGA action binds all those who would be bound by a judgment in an
20 action brought by the government. *Id.*

21 Finally, in a settlement of a PAGA action brought by an aggrieved employee, the court
22 need only "review and approve" the settlement. Cal. Lab. Code § 2699(1)(2) (2016). The Parties
23 to this current PAGA action have reached such an agreement and now seek this Court's approval
24 of the proposed settlement.

25 **IV. THE SETTLEMENT TERMS AND DISTRIBUTION OF PENALTIES**

26 The Parties have agreed that Defendant will pay a total settlement amount of \$395,000.00
27 (the "Gross Settlement Amount"). *See* Settlement Agreement, § 3.1. From this amount, up to
28 one-third (1/3) of the Gross Settlement Amount, or \$131,666.67, is allocated to attorneys' fees

1 and up to \$30,000.00 to actual litigation costs. *Id.* at § 3.2.2. To date, Plaintiff's counsel has spent
2 \$29,939.65 in actual litigation costs and incurred \$244,510 in attorneys' fees. *See* Connolly Decl.,
3 ¶¶ 33-34, Exhibit 4. The Settlement allocates up to \$4,750.00 to payment for the costs of the
4 Settlement Administrator, Phoenix Settlement Administrator, associated with the administration
5 of the Settlement. Settlement Agreement, § 3.2.3. For Plaintiff's efforts in assisting with the
6 Lawsuit and in exchange for a general release of her individual claims, \$15,000.00 is allocated to
7 Plaintiff. *Id.* at § 3.2.1. Specifically, Plaintiff maintained that she had individual claims for
8 harassment and wrongful termination, but agreed to release those claims as part of the settlement.
9 *See* Declaration of Kristi Lynn White.

10 After deducting the above amounts for attorneys' fees and costs, Settlement
11 Administrator's costs, and Plaintiff's individual settlement award, the remaining fund will
12 constitute the "PAGA Penalties" in which 75% will be paid to the LWDA (the "LWDA PAGA
13 Payment") and 25% will be paid to the Aggrieved Employees as their "Individual PAGA
14 Payments". Settlement Agreement, ¶ 3.2.4. The Aggrieved Employees are all similarly situated
15 non-exempt persons in the State of California who are or were employed by Defendant in
16 California and classified as a non-exempt employee who worked for Defendant during the PAGA
17 Period. *Id.* at ¶ 1.4. The PAGA Period means the period from September 13, 2021 to March 15,
18 2024. *Id.* at ¶ 1.19.

19 The Individual PAGA Payments will be calculated pro rata based on the number of pay
20 periods working during the PAGA Period. Settlement Agreement, § 3.2.4.1. The Individual
21 PAGA Payments shall be paid to the Aggrieved Employees by way of a single check which will
22 be valid for 180 days. *Id.* at § 4.3.1. All funds not claimed within 180 days of mailing of payment
23 shall be sent to the California State Controller's Office Unclaimed Property Fund with an
24 identification of the amount of unclaimed funds attributable to each PAGA Employee. *Id.* at §
25 4.3.3. The Individual PAGA Payments will be characterized as penalties for tax purposes and
26 reported on IRS Form 1099. *Id.* at § 3.2.4.2.

27 Prior to this disbursement, the Settlement Administrator shall check the Aggrieved
28 Employees' addresses provided by Defendant using the National Change of Address database.

1 Settlement Agreement, § 4.3.1. For any returned payments without a forwarding address, the
2 Settlement Administrator shall run a skip trace. *Id.* at § 4.3.2. Aggrieved Employees will receive a
3 letter along with their Individual PAGA Payment explaining the reason for the payment, the
4 content of which will be submitted to the Court for approval. *Id.* at § 4.3.1. The proposed letter is
5 attached to the Settlement Agreement as Exhibit A.

6 In exchange for the settlement payment, the State of California and the Aggrieved
7 Employees will release the “Released Parties” meaning “Defendant and each of its former and
8 present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors,
9 successors, assigns, subsidiaries, and affiliates” from “any and all facts and claims asserted or that
10 could have been asserted, in the Action or any other claims, based on the facts alleged for civil
11 penalties under the PAGA, California Labor Code § 2698, *et seq.*, that are based upon or arise, or
12 could have been based or arise, from the factual allegations alleged in the Operative Complaint
13 and/or Plaintiff’s PAGA Notice during the PAGA Period, including claims for (1) Failure to Pay
14 Minimum Wages (including any and all theories related to “off the clock work” or incorrect
15 calculation of the “regular rate of pay”), (2) Failure to Pay Overtime Wages, (3) Failure to
16 Provide Meal Periods or compensation in lieu thereof, (4) Failure to Provide Rest Periods or
17 compensation in lieu thereof, (5) Failure to Provide Accurate Wage Statements, (6) Failure to
18 Timely Pay All Wages During Employment and Due at Termination, (7) Failure to Reimburse
19 Expenses, and (8) Failure to Maintain Accurate and Complete Records and for violations of
20 and/or based on California Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174,
21 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 2698, 2699, 2699.3, 2699.5,
22 Section 1021.5 of the California Code of Civil Procedure, California Business and Professions
23 Code Section 17200, *et seq.* and IWC Wage Order §§ 3-4, 11, 12..” Settlement Agreement, §§
24 1.26, 5.2.

25 **V. THE SETTLEMENT IS FAIR AND REASONABLE**

26 **A. Standard for Approval**

27 PAGA settlements must be “fair, reasonable, and adequate in view of PAGA’s purposes
28 to remediate present labor law violations, deter future ones, and to maximize enforcement of

1 state labor laws.” *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021). The court must find
2 that the plaintiff “has adequately represented the state’s interests, and hence the public interest.”
3 *Id.* at 89. The LWDA must be notified of the settlement and be given an opportunity to object.
4 The court may look to parallel class action guidelines to determine what is “fair, adequate and
5 reasonable.” *Kullar v. Foot Locker Retail*, 168 Cal.App.4th 116, 126 (2008). In that analysis, the
6 court has “broad discretion in making this determination.” *In re Microsoft I-V Cases*, 135
7 Cal.App.4th 706, 723 (2006). Relevant factors may include “the strength of the plaintiffs’ case,
8 the risk, expense, complexity and likely duration of further litigation, ... the amount offered in
9 settlement, the extent of discovery completed and the stage of the proceedings, the experience
10 and views of counsel, the presence of a governmental participant” *Dunk v. Ford Motor Co.*,
11 48 Cal.App.4th 1794, 1801 (1996).

12 **B. The Settlement Meets the Standard for Approval**

13 Here, the \$395,000.00 Gross Settlement Amount is reasonable for a group of
14 approximately 360 employees. Connolly Decl., ¶ 13. A penalty of \$395,000.00 is large enough to
15 punish Defendant for alleged past violations and deter future violations. *Id.* The settlement
16 amount is equivalent to a penalty of about \$1,097 per employee. *Id.* At the same time, the penalty
17 amount is not so large as to be unjust, oppressive or confiscatory, considering the company’s
18 potential exposure explained below. *Id.* The Gross Settlement Amount is also reasonable in light
19 of the facts of the foregoing action, the real risk that no PAGA penalties would be paid, and
20 inherent risks and uncertainties associated with PAGA claims. *Id.* at ¶ 14.

21 If Plaintiff could recover a penalty for all 20,765 pay periods, then Defendant’s potential
22 exposure at the initial violation rate of \$100.00 per pay period is as follows: 20,765 x \$100.00 per
23 pay period is \$2,076,500. Connolly Decl., ¶ 15. If the Court stacked different types of penalties
24 in each pay period, Plaintiff calculated the exposure as follows:

- 25 a. 20,765 pay periods x \$100 per pay period x 25% alleged meal violation rate =
26 \$519,125 for meal period violations;
- 27 b. 20,765 pay periods x \$100 per pay period x 100% alleged violation rate =
28 \$2,076,500 for rest break violations;

- 1 c. 20,765 pay periods x \$100 per pay period x 14% violation rate (for alleged
2 failure to pay overtime at proper regular rate of pay) = \$290,710 for unpaid
3 overtime wages;
- 4 d. 20,765 pay periods x \$100 per pay period x 100% alleged violation rate =
5 \$2,076,500 for wage statement penalties; and
- 6 e. 49 former employees x \$100 alleged penalty = \$4,900 for waiting time
7 penalties.

8 *Id.*

9 Defendant raised a number of arguments during settlement negotiations and provided
10 evidence that could have defeated Plaintiff's claims. Connolly Decl., ¶ 16. For example, Plaintiff
11 argued Defendant failed to provide employees with all lawful meal and rest periods as
12 demonstrated by employees' recorded time punches. *Id.* However, Defendant argued that it paid
13 meal period premiums when employees' time showed violations and that it maintained written
14 policies authorizing compliant breaks. *Id.* Further, Defendant argued that it was not responsible
15 for policing meal periods, that any missed breaks were the employees' personal choice to waive
16 the break, and presented evidence of signed meal waivers. *Id.* Additionally, Plaintiff argued that
17 Defendant failed to pay overtime at the proper blended rate of pay when more than one rate of
18 pay was paid in a pay period. *Id.* However, Defendant argued that it used a "rate in effect"
19 method and provided case law from the Court of Appeals that permitted employers to use this
20 method at the time. *Id.* Moreover, Plaintiff was not confident that she would be able to recover
21 derivative wage statement and waiting time penalties if she could not prove the underlying
22 claims. *Id.* Further, Defendant argued that even if there were derivative wage statement
23 violations, employees could still determine the rate at which they are being paid from the wage
24 statement alone, which complies with California law. *Id.* Finally, by providing all of the
25 information necessary to determine an employee's overtime rate of pay, Defendant argued that it
26 reasonably and in good faith believed it was providing a complete and accurate wage statement.

27 *Id.*

1 Another crucial factor in evaluating the value of a PAGA-only case is that all PAGA
2 awards are discretionary and can be reduced by the Court. Connolly Decl., ¶ 17. Under Labor
3 Code § 2699(e)(2), the Court can reduce the PAGA penalties “if, based on the facts and
4 circumstances of the particular case, to do otherwise would result in an award that is unjust,
5 arbitrary and oppressive, or confiscatory.” In other words, were this matter to go to trial, any
6 award granted would be at the discretion of the Court. *Id.* In settling this case, Plaintiff
7 recognizes that, although he believes there would be no persuasive grounds to reduce the
8 penalties, the Court could determine otherwise and significantly reduce the PAGA penalties,
9 especially given the bargained-for protections of the collective bargaining agreement. *Id.* The
10 wide range of potential recovery and the additional delays and risks of trial justified settling for a
11 reasonable amount of recovery. *Id.*

12 Finally, Plaintiff considered the risk that the Court find at trial that this action was
13 ultimately time-barred under the applicable statute of limitations. Connolly Decl., ¶ 18. As
14 discussed above, the Court denied Defendant’s Motion for Summary Judgment on this issue,
15 finding that there was a dispute of material facts. *Id.* Accordingly, there was still a risk that after
16 more months of litigation, the Court could find this action was indeed time-barred and the State
17 of California and the aggrieved employees would not recover anything. *Id.*

18 VI. CONCLUSION

19 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement
20 pursuant to PAGA in this Action.

21 Dated: April 10, 2025

22 AEGIS LAW FIRM, PC

23 By _____
24 Kristy R. Connolly
25 Attorneys for Plaintiff Kristi Lynn White
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