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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES**

ELENA ORELLANA, as an individual and on  
behalf of all others similarly situated,

Plaintiff,

vs.

LIBERTY BUILDING MAINTENANCE &  
SERVICES, INC., a California corporation; and  
DOES 1 through 100,

Defendants.

Case No. 22STCV19544

*[Assigned for all purposes to Hon. David S.  
Cunningham III, Dept. SSC-11]*

**PLAINTIFFS' SUPPLEMENTAL  
BRIEF IN SUPPORT OF  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Date: March 7, 2024

Time: 10:00 a.m.

Dept.: SSC-11

Complaint Filed: June 15, 2022

Trial Date: None Set

**TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

Plaintiffs Elena Orellana and Rocio Navarro (“Plaintiffs”) hereby submit the following supplemental brief in response to the Court’s December 18, 2023 Checklist for Preliminary Approval of Class Action Settlement (the “Checklist”). After reviewing the Court’s Checklist, Plaintiffs and Defendant Liberty Building Maintenance & Services, Inc. (“Liberty Building”) (Plaintiffs and Liberty Building are collectively referred to as the “Parties”) amended the Stipulation of Settlement (“Settlement Agreement”) and the Notice of Pendency of Class Action and Proposed Settlement (“Class Notice”) in accordance with the issues identified by the Court.

Plaintiffs address each issue raised in the Court’s Checklist. The amended Settlement Agreement and Class Notice are attached as Exhibits 1 and 2, respectively, to the Declaration of Sean M. Blakely (“Blakely Decl.”), filed concurrently herewith. Red-line versions of the Settlement Agreement and Class Notice showing all changes are attached as Exhibits 3 and 4, respectively, to the Blakely Decl.

**1. SETTLEMENT AGREEMENT**

**a. The Basics – Class and Release Period**

The Court’s Checklist states: “*The settlement purports to release PAGA claims (Settlement Agreement ¶ 2.B) but there is no PAGA Period definition provided to limit the scope of the PAGA release.*”

The Parties have amended the Settlement Agreement to address the Court’s concerns. Liberty Building contends that it has no PAGA liability because Liberty Building ceased operations in April of 2021, more than one (1) year before Plaintiffs first notified the LWDA of Liberty Building’s potential PAGA liability. However, in light of the Court’s concerns, the Parties have allocated \$10,000.00 as civil penalties under the Private Attorneys General Act (“PAGA”). Blakely Decl., ¶ 3, Exh. 1, at ¶ 3(C)(5). The amended Settlement Agreement defines “Aggrieved Employees” as all Settlement Class members who worked during the Class Period, which is defined as June 15, 2018 through April 1, 2021. *Id.*, at ¶¶ 1, 2(B).

**b. Release of PAGA Claims**

The Court’s Checklist states: “*Class cases which include a PAGA claim should have a*

1 *separate release for the PAGA claim tied to the facts alleged in the notice given to the LWDA.*  
2 *See Decl. of Sean Blakely at ¶ 11. The PAGA claim appears to have not been valued by counsel*  
3 *due to Defendant’s contention that it does not have any potential PAGA liability, and this*  
4 *settlement does not provide for a PAGA penalty payment nor was the LWDA notified of it. If so,*  
5 *then how would it be proper for Class Members/Aggrieved Employees to release PAGA claims*  
6 *under this settlement, rather than having the Plaintiffs dismiss their PAGA claim instead.”*

7 As stated above, Liberty Building contends that it had no exposure for liability for a PAGA  
8 claim because the company ceased operations in April of 2021. However, in light of the Court’s  
9 concerns, the Parties have amended the Settlement Agreement to allocate \$10,000.00 as PAGA  
10 civil penalties, of which, 75% (i.e., \$7,500.00) will be distributed to the LWDA, and 25% (i.e.,  
11 \$2,500.00) will be distributed to Settlement Class members, as the PAGA requires. Blakely Decl.,  
12 ¶ 3, Exh. 1, at ¶¶ 2(B), 3(C)(5), 4(C).

13 Plaintiffs also note that Plaintiffs served the proposed Settlement Agreement on the  
14 LWDA when Plaintiffs filed their Motion for Preliminary Approval on November 22, 2023.  
15 Blakely Decl., ¶ 3, Exh. 5 (Proof of Service on LWDA).

16 Following service of the Settlement Agreement on the LWDA on November 22, 2023,  
17 Plaintiffs did not receive, and to this date still have not received, any notice or objection from the  
18 LWDA regarding the Parties’ initial Settlement Agreement. Blakely Decl., ¶ 4.

19 Since the LWDA has not commented or objected to the proposed Settlement, the LWDA’s  
20 non-objection is indicative of the LWDA’s assent to the terms of the initial settlement. For  
21 example, in *Jordan v. NCI Group, Inc.*, No. 16-701 JVS (SPx), 2018 WL 1409590 (C.D. Cal. Jan.  
22 5, 2018), Judge Selna of the Central District approved a PAGA settlement and, in doing so, found  
23 persuasive that the LWDA was permitted to file a response to the proposed settlement and did not  
24 file any comment or objection. The Court inferred the LWDA’s nonresponse was “tantamount to  
25 its consent to the proposed settlement terms, namely the proposed PAGA penalty amount.” *Id.* at  
26 \*3 (quoting *Echavez v. Abercrombie & Fitch Co., Inc.*, No. CV 11-09754-GAF, 2017 WL  
27 3669607 at \*3 (C.D. Cal. Mar. 23, 2017)); see also *Gooding v. Vita-Mix Corporation*, No. 2:16-  
28 cv-03898-ODW(JEMx), 2018 WL 571881 at \*6 (C.D. Cal. Jan. 25, 2018) (overruling objection

1 that PAGA payment was too low, and finding that “[the objector’s] claim regarding the CLWDA  
2 is refuted by the fact that it receives a payment from the settlement fund in connection with  
3 Plaintiffs’ PAGA claim, and that the CLWDA did not lodge any objection.”).

4 Plaintiffs are serving the proposed amended Settlement Agreement on the LWDA  
5 concurrently with this filing. Blakely Decl., ¶ 6.

6 With respect to whether the proposed Settlement is fair to other Aggrieved Employees,  
7 pursuant to the amended Settlement Agreement, all Settlement Class members (i.e., all non-  
8 exempt employees who worked for Liberty Building in California from June 15, 2018 through  
9 April 1, 2021) are eligible to receive a portion of the PAGA Amount based on the proportionate  
10 number of workweeks worked during the Class Period. Blakely Decl., ¶ 3, Exh. 1, at ¶¶ 2(B),  
11 3(C)(5), 4(C).

12 Plaintiffs’ analysis confirms that a \$10,000 PAGA allocation is fair, adequate and  
13 reasonable. Plaintiffs estimated a maximum total PAGA exposure for the PAGA Period at  
14 approximately \$876,400 (8,764 “initial” violations \* \$100 “initial” penalty). Blakely Decl., ¶ 5;  
15 *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding “initial” violation rate  
16 applies until employer is notified that it is violating a Labor Code provision). However, these  
17 penalties derive from the underlying wage and hour violations, which Liberty Building vigorously  
18 disputes. Blakely Decl., ¶ 5.; *see e.g., Green v. Lawrence Service Co.* 2013 WL 3907506, \*5, n.5  
19 (C.D. Cal. 2013) (explaining that a PAGA claim’s success was determined by the merits of its  
20 underlying claims). Liberty Building also asserts the Court would drastically reduce any award  
21 of PAGA penalties as “confiscatory.” Blakely Decl., ¶ 5; *see also Thurman v. Bayshore Transit*  
22 *Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties);  
23 *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL  
24 7563047, at \*4 (reducing PAGA penalties from \$2.8 million to \$500,000). Finally, Liberty  
25 Building maintains that there is no PAGA liability because the company ceased operations more  
26 than one (1) year before Plaintiffs submitted their LWDA letter alleging their PAGA claim.  
27 Blakely Decl., ¶ 5. Therefore, Plaintiffs discounted the maximum figure by 90% for risk of losing  
28 on the merits and/or not recovering a PAGA penalty for each and every pay period, and an

1 additional 85% to account for the possibility of this Court reducing penalties, to arrive at an  
2 estimated PAGA exposure of approximately \$13,146. *Id.* The \$10,000 PAGA allocation is  
3 therefore appropriate based on the facts in this case.

4 **c. Responses to Notice**

5 The Court's Checklist states: "*At Settlement Agreement ¶ 9.G, remove the conclusive*  
6 *presumption that Class Members received the Notice if not returned after 30 days. Efforts to*  
7 *locate updated addresses for returned notices should continue throughout the 60-day notice*  
8 *period.*"

9 The Parties have amended the Settlement Agreement in accordance with the Court's  
10 recommendation. *See* Blakely Decl., ¶ 3, Exh. 1, at ¶ 9(G). The Settlement Agreement now  
11 provides: "Efforts to locate updated addresses for Settlement Class members shall continue  
12 throughout the 60-day notice period." The parties also removed the language regarding the  
13 "conclusive presumption." Blakely Decl., ¶ 3, Exh. 1, at ¶ 9(G).

14 **d. Cy Pres Distribution**

15 The Court's Checklist states: "*Defendant and its counsel should each also provide*  
16 *declarations disclosing any interest or involvement (or lack thereof) in the governance or work*  
17 *of Inner City Law Center.*"

18 Both Liberty Building's counsel, Lisa K. Garner, and Liberty Building's President, Marcia  
19 Fryslie, have submitted declarations with this supplemental briefing stating that neither has any  
20 interest or involvement in Inner City Law Center. *See* Declarations of Lisa K. Garner and Marcia  
21 Fryslie.

22 **e. Miscellaneous**

23 The Court's Checklist states: "*Assure the Settlement Agreement and Notice are consistent*  
24 *and that the Settlement Agreement (including revised version) has been signed by all parties and*  
25 *counsel. Carefully proofread both.*"

26 Plaintiffs submit the amended Settlement Agreement, signed by all parties and counsel.  
27 Blakely Decl., ¶ 3, Exh. 1. Plaintiffs submit the amended Class Notice, as well. *Id.*, Exh. 2.  
28 Plaintiffs also submit red-lined versions of both the amended Settlement Agreement and amended

1 Class Notice. *Id.*, Exhs. 3 and 4.

2 **2. EXHIBITS TO THE MOTION**

3 The Court's Checklist states: "*Provide proof of submission of the proposed settlement*  
4 *agreement to the LWDA (Lab. Code section 2699, subd. (1)(2). (If applicable).*"

5 Plaintiffs submitted the initial Settlement Agreement to the LWDA on November 22,  
6 2023. Blakely Decl., ¶ 3, Exhs. 5 and 6. Plaintiffs will also serve this supplemental brief and the  
7 amended Settlement Agreement to the LWDA as soon as the present brief has been filed. *Id.*, at  
8 ¶ 6.

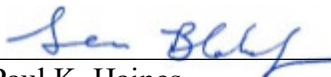
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10  
11 Respectfully submitted,

12 Dated: January 17, 2024

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13 By:

14   
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