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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

MARIO ALVARADO, an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

RED POINTE ROOFING, L.P., a California
Limited Partnership; and DOES 1 through
100,

Defendants.

CASE NO. 30-2022-01286100-CU-OE-CXC

*[Case assigned for all purposes to the Hon.
Melissa R. McCormick, Dept. CX104]*

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

Date: October 24, 2024
Time: 2:00 p.m.
Dept.: CX104

Action Filed: October 12, 2022
Trial Date: None Set

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

2 Plaintiff Mario Alvarado (“Plaintiff”) hereby submits the following Supplemental Brief
3 in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement in response
4 to the questions posed by this Court in its May 30, 2024, Tentative Ruling (the “Tentative”). A
5 true and correct copy of the Tentative is attached to the Declaration of Andrew J. Rowbotham
6 (“Rowbotham Decl.”) as **Exhibit 11** and submitted concurrently herewith. After reviewing the
7 Tentative, Plaintiff and Defendant Red Pointe Roofing, L.P. (“Defendant”) (collectively, the
8 “Parties”) met and conferred regarding the issues raised by the Court, and address each of the
9 Court’s questions below, following the same order in which the questions were posed in the
10 Tentative.

11 **The Court’s Questions and Comments as to Settlement:**

12 (1) *The phrase “(or Plaintiff’s letter to the LWDA dated October 13, 2022)” should*
13 *be removed from the Settlement Class release (Settlement Agreement ¶ 3(A)).*

14 The Parties have revised the Stipulation of Settlement, and have removed the language
15 “or Plaintiff’s letter to the LWDA dated October 13, 2022,” as indicated by the Court. True and
16 correct copies of the revised Stipulation of Settlement in a “clean” and “tracked changes” format
17 are attached to the Declaration of Andrew J. Rowbotham (“Rowbotham Decl.”) as **Exhibits 1**
18 **and 2** respectively. The Notice of Class Action and PAGA Settlement has similarly been revised
19 to incorporate this update. *See id.*, **Exhibits 3 and 4** (The Notice of Class Action and PAGA
20 Settlement, Request for Exclusion Form, and Objection Form (collectively, “Notice Packet”) in
21 “clean” and “tracked changes” format) at p. 3.

1 (2) *The PAGA Members release (Settlement Agreement ¶3(B)) is overbroad. Releases*
2 *for aggrieved employees other than plaintiff should not release more than the civil*
3 *penalties available under PAGA based on the facts alleged in the operative*
4 *complaint and the notice letter to the LWDA.*

5 The Stipulation of Settlement has been revised to limit the PAGA Release as indicated by
6 the Court. *See* Rowbotham Decl., **Exhibit 1**, at §3.B. The Parties have further revised the Notice
7 Packet to reflect the update as well. *See id.*, **Exhibit 3**, at p. 4.

8 (3) *The Settlement Agreement (¶ 3(C)) states that plaintiff agrees to provide the*
9 *releases therein “[i]n light of Plaintiff’s Class Representative Enhancement*
10 *Payment.” This provision is inconsistent with paragraphs 4(C)(3) and 6 of the*
11 *Settlement Agreement and inconsistent with the description of the Class*
12 *Representative’s Enhancement Payment in the notice. In addition, an*
13 *enhancement award is not intended to serve as consideration for the release of*
14 *additional claims, but rather to compensate a class representative for work done*
15 *on behalf of the class, to make up for financial or reputational risk undertaken in*
16 *bringing the action, and, in some circumstances, to recognize a class*
17 *representative’s willingness to act as a private attorney general. The court is*
18 *unlikely to approve a settlement that provides an enhancement award in exchange*
19 *for a release.*

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21 The Stipulation of Settlement has been revised to remove the language “[i]n light of
22 Plaintiff’s Class Representative Enhancement Payment,” as indicated by the Court. *See*
23 Rowbotham Decl., **Exhibit 1**, at §3.C. The Parties do not intend Plaintiff’s requested
24 enhancement payment to be the consideration for any release.

1 (4) *In paragraph 3(D) (“Effective Date”), “latter” should be “later,” and “and”*
2 *should be inserted before subsection (d).*

3 The Stipulation of Settlement has been revised as indicated by the Court. *See* Rowbotham
4 Decl., **Exhibit 1**, at §3.D. The Parties have further revised the Notice Packet to reflect the update
5 as well. *See id.*, **Exhibit 3**, at p. 4.

6 (5) *Why are the individual PAGA payments calculated based on workweeks (rather*
7 *than pay periods)? Settlement Agreement ¶ 5(B)(i).*

8 The Stipulation of Settlement has been revised to calculate PAGA Payments based on pay
9 periods rather than workweeks. *See* Rowbotham Decl., **Exhibit 1**, at §5.B.i. The Parties have
10 further revised the Notice Packet to reflect the update as well. *See id.*, **Exhibit 3**, at p. 3.

11 (6) *The class members need not state “the legal and factual bases” for objections.*
12 *Settlement Agreement ¶ 9(E).*

13 The Stipulation of Settlement has been revised to exclude the requirement that objections
14 must contain “the legal and factual bases” for the objection. *See* Rowbotham Decl., **Exhibit 1**, at
15 §9.E. The Parties have further revised the Notice Packet to reflect the update as well. *See id.*,
16 **Exhibit 3**, at p. 5.

17 (7) *Paragraph 9(D) should include that all exclusion requests shall be submitted to*
18 *the court.*

19 The Stipulation of Settlement has been revised to include that “all Request for Exclusions
20 shall be submitted to the Court at the time Plaintiff submits the Motion for Final Approval,” as
21 indicated by the Court. *See* Rowbotham Decl., **Exhibit 1**, at §9.D.iv. The Parties have further
22 revised the Notice Packet to reflect the update as well. *See id.*, **Exhibit 3**, at p. 5.
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1 (8) *Paragraph 9(F) should be revised to state (i) the parties shall file with the court*
2 *all disputes submitted by class members, the evidence submitted, and the*
3 *resolution of the disputes, and (ii) although the settlement administrator may make*
4 *the initial decision regarding claim disputes, the court may review any decision*
5 *made by the settlement administrator regarding a claim dispute.*

6 The Stipulation of Settlement has been revised to include that “...the Parties will file with
7 the Court all disputes submitted by Settlement Class Members, the evidence submitted, and the
8 resolution of the disputes, and although the Settlement Administrator may make the initial
9 decision regarding claim disputes, the Court may review any decision made by the Settlement
10 Administrator regarding a claim dispute,” as indicated by the Court. *See* Rowbotham Decl.,
11 **Exhibit 1**, at §9.F. The Parties have further revised the Notice Packet to reflect the update as well.
12 *See id.*, **Exhibit 3**, at p. 5.

13 (9) *The declaration(s) filed in support of the motion must inform the court whether the*
14 *parties, after making reasonable inquiry, are aware of any class, representative*
15 *or other collective action in any court that asserts claims similar to those asserted*
16 *in this action. If any such actions are known to exist, the declaration(s) shall also*
17 *state the name and case number of any such case, the procedural status of that*
18 *case, and describe the impact of the settlement on that case.*

19 Concurrently with the filing of this supplemental briefing, Plaintiff has filed declarations
20 from Diana Petersen (Defendant’s Director of Administration) and Defendant’s counsel (Stacie
21 Turner, Esq.) attesting that they have made reasonable inquiry and are unaware of any class,
22 representative or other collective action in any court that asserts claims similar to those asserted
23 in this action. For the Court’s convenience, Plaintiff has attached these declarations to the
24 Rowbotham Decl. as **Exhibits 5 and 6**.

25 Additionally, Plaintiff’s counsel and Plaintiff have submitted updated declarations
26 attesting to the same. *See* Rowbotham Decl., ¶ 7. A true and correct copy of the Declaration of
27 Mario Alvarado submitted in support of Preliminary Approval is attached hereto as **Exhibit 7**.
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1 (10) *The parties and their counsel must state in declarations filed with the court*
2 *whether they have an interest in the cy pres recipient, including its governance.*

3 Concurrently with the filing of this supplemental briefing, Plaintiff has filed declarations
4 from Defendant and Defendant’s counsel attesting that they have no interest in the cy pres
5 recipient, Legal Aid SoCal, including its governance. *See* Rowbotham Decl., **Exhibits 5 and 6.**

6 Additionally, Plaintiff’s counsel and Plaintiff have submitted updated declarations
7 attesting to the same. *See* Rowbotham Decl., ¶¶ 6-7; **Exhibit 7.**

8 **The Court’s Questions and Comments as to the Notice Packet:**

9 (11) *The notice should be revised consistent with the above.*

10 The Parties have revised the Notice Packet to reflect the revisions in the Stipulation of
11 Settlement. *See generally* Rowbotham Decl., **Exhibit 3.**

12 (12) *The title of the notice should include “AND PAGA” after “CLASS ACTION” and*
13 *before “SETTLEMENT.”*

14 The Parties have revised the Notice Packet to reflect the Court’s request. *See* Rowbotham
15 Decl., **Exhibit 3**, at p. 1.

16 (13) *The court prefers that the notice be accompanied by separate objection and*
17 *exclusion forms.*

18 The Parties have revised the Notice Packet to include a separate Objection Form and
19 Request for Exclusion Form. *See* Rowbotham Decl., **Exhibit 3**, at pp. 8-9.

20 (14) *The notice should advise the PAGA class members that they cannot opt out of the*
21 *settlement and that, even if they do not cash their checks, they will be bound by the*
22 *release.*

23 The Parties have revised the Notice Packet to include the following language: “PAGA
24 Members may not opt-out of the release of PAGA claims and will thus receive payment for their
25 share of PAGA civil penalties even if they request exclusion from the Settlement and do not
26 receive a class portion of their Individual Settlement Payment. PAGA Members will be bound by
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1 the release in the above mentioned “PAGA Released Claims,” regardless of whether they cash
2 their checks for their share of PAGA civil penalties.” See Rowbotham Decl., **Exhibit 3**, at p. 5.

3 (15) *Class members need not provide “contact information for any attorney*
4 *representing [the class member] regarding [an] objection,” “each specific reason*
5 *in support of [an] objection,” or “any legal or factual support for each objection*
6 *together with any evidence in support of [an] objection.”*

7 The Parties have revised the Notice Packet to exclude the requirement that Settlement
8 Class members objecting to the Settlement must provide contact information for his/her attorney,
9 the specific reason for the Objection, and “any legal or factual support” for the Objection. See
10 Rowbotham Decl., **Exhibit 3**, at p. 5.

11 (16) *The second-to-last sentence in the third full paragraph on page 5 should be revised*
12 *to state: “You have the right to appear either in person or through your own*
13 *attorney at this hearing to object to the settlement, whether or not you submit a*
14 *written objection.”*

15 The Parties have revised the Notice Packet to incorporate the Court’s requested language.
16 See Rowbotham Decl., **Exhibit 3**, at p. 5.

17 (17) *The notice should state that the settlement administrator will post all key*
18 *documents on its website, including the operative complaint, the PAGA notice*
19 *letter(s) to the LWDA, the settlement agreement and any amendments, the notice*
20 *packet, the orders granting preliminary and final approval, and the judgment. The*
21 *judgment should be posted for at least 180 days.*

22 The Parties have revised the Notice Packet to incorporate the Court’s requested language.
23 See Rowbotham Decl., **Exhibit 3**, at p. 5.

24 **The Court’s Questions and Comments as to the Proposed Order:**

25 (18) *The proposed order should be revised consistent with the above.*

26 The Parties have revised the [Proposed] Order Granting Plaintiff’s Motion for Preliminary
27 Approval of Class Action and PAGA Settlement (“Proposed Order”) to reflect the revisions in
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1 the Stipulation of Settlement and Notice Packet. *See generally* Rowbotham Decl., **Exhibit 8**,
2 (Revised [Proposed] Order in “clean” format). A true and correct copy of the Revised Proposed
3 Order is also submitted in a “tracked changes” format as **Exhibit 9** to the Rowbotham Decl..

4 (19) *Counsel’s name and contact information should be removed from the caption page*
5 *of the proposed order.*

6 Plaintiff revised the Proposed Order to remove Plaintiff’s counsels’ name and contact
7 information from the caption page. *See* Rowbotham Decl., **Exhibit 8**.

8 (20) *The caption and page 1 lines 1-2 should include “and PAGA” after “Class*
9 *Action” and before “Settlement.”*

10 Plaintiff revised the Proposed Order to include “and PAGA” after “Class Action” and
11 before “Settlement” In the caption page and page 1. *See* Rowbotham Decl., **Exhibit 8**, at p.1.

12 (21) *The settlement agreement and any amendments thereto, and the notice packet*
13 *(including certified translations) should be attached to the proposed order as*
14 *exhibits.*

15 Plaintiff attached to the Proposed Order: 1) the Stipulation of Settlement as Exhibit A; and
16 2) the Notice Packet as Exhibit C. *See* Rowbotham Decl., **Exhibit 8**, at p. 1.

17 (22) *The proposed order should include the gross settlement amount, the net settlement*
18 *amount, the not-to-exceed proposed disbursement amounts, and the PAGA*
19 *penalties (total and 75/25 amounts).*

20 Plaintiff included the Gross Settlement Amount, Net Settlement Amount, and PAGA
21 penalty distribution in the Proposed Order. *See* Rowbotham Decl., **Exhibit 8**, at pp.1-2.

22 (23) *Paragraph 1 should include that the court finds that the settlement is fair,*
23 *adequate and reasonable, and in the best interests of the class members.*

24 Plaintiff included the Court’s requested language in paragraph 1 of the Proposed Order.
25 *See* Rowbotham Decl., **Exhibit 8**, at p.1.

1 (24) *In paragraph 2, the word “preliminarily” should be inserted before “designates”*
2 *in two places.*

3 Plaintiff included the Court’s requested language in paragraph 2 of the Proposed Order.
4 *See* Rowbotham Decl., **Exhibit 8**, at p.1.

5 (25) *Paragraph 3 is missing.*

6 Plaintiff has updated the Proposed Order to correct this numbering error. *See* Rowbotham
7 Decl., **Exhibit 8**, at pp.1-2.

8 (26) *In paragraph 4, the word “preliminarily” should be inserted before “designates.”*

9 Plaintiff included the Court’s requested language in paragraph 4 of the Proposed Order.
10 *See* Rowbotham Decl., **Exhibit 8**, at p.2.

11 (27) *The proposed order should include the procedures and schedule for objections,*
12 *exclusions and disputes.*

13 Plaintiff included the procedures and schedule for Objections, Requests for Exclusions,
14 and Disputes in Paragraph 15 of the Proposed Order. *See* Rowbotham Decl., **Exhibit 8**, at pp.4-
15 7.

16 (28) *The proposed order should include a provision that the court will retain*
17 *jurisdiction to enforce the settlement pursuant to Civil Procedure Code section*
18 *664.6.*

19 Plaintiff included the following language, as indicated by the Court: “The Court will retain
20 jurisdiction to enforce the Settlement pursuant to the California Code of Civil Procedure § 664.6”
21 in Paragraph 18 of the Proposed Order. *See* Rowbotham Decl., **Exhibit 8**, at pp.7.

22 (29) *The parties should propose a date for the final approval hearing. The court holds*
23 *final approval hearings on Thursdays at 2:00 p.m. The motion for final approval*
24 *should be filed and served at least 16 court days before the final approval hearing.*

25 Plaintiff proposes March 6, 2025, at 2:00 p.m., as the Final Approval Hearing date and
26 time, and has lodged the Proposed Order concurrently herewith that includes this proposed
27 hearing date. *See* Rowbotham Decl., **Exhibit 8**, at p.4.
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1 (30) *Plaintiff is ordered to provide notice, including to the LWDA, and to file a proof*
2 *of service. Plaintiff must also serve the LWDA with any supplemental brief and*
3 *any amended settlement documents, and file a proof of service.*

4 In light of the proposed changes made to the Parties Settlement, as outlined herein,
5 Plaintiff has submitted the Stipulation of Settlement, revised Notice Packet, and revised
6 [Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement to the
7 California Labor and Workforce Development Agency (“LWDA”). A true and correct copy of
8 Plaintiff’s supplemental settlement submission and the LWDA’s confirmation of receipt is
9 attached to the Rowbotham Decl. as **Exhibit 10**.

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11 Dated: October 11, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

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14 By:



Andrew J. Rowbotham
Attorneys for Plaintiff