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Attorneys for Plaintiff
Selvin Ramirez Batres

SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN

SELVIN RAMIREZ BATRES, on behalf of
himself and all aggrieved employees,

Plaintiff,

v.

LEE MECHANICAL CONTRACTORS, INC.,
and DOES 1 to 100,

Defendants.

) NO. BCV-23-102686
)
) PLAINTIFF SELVIN RAMIREZ BATRES'
) NOTICE OF MOTION AND MOTION TO
) APPROVE PAGA SETTLEMENT;
) MEMORANDUM OF POINTS AND
) AUTHORITIES; DECLARATION OF
) ADAM ROSE; EXHIBITS; PROPOSED
) ORDER
)
) Date: March 26, 2024
Time: 8:30 a.m.
Dept: 17

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that on March 26, 2024 at 8:30 a.m. or as soon thereafter as may be heard on Department 17 of the Kern County Superior Court located at 1415 Truxtun Avenue, Bakersfield, CA 93301, Plaintiff Selvin Ramirez Batres will move the court pursuant to Labor Code section 2699(1)(2) to approve the PAGA settlement that has been reached. The motion is based on this notice, the memorandum of points and authorities, the declaration of Adam Rose with exhibits, and arguments at the hearing.

Date: February 20, 2024

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/s/ Adam Rose
Attorney for Plaintiff
Selvin Ramirez Batres

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. Introduction

3 This case involved a good faith wage and hour dispute, where Plaintiff traveled to Lebec,
4 California to work on a construction project for Defendant Lee Mechanical Contractors, Inc.
5 Defendant is a company that provides project management, construction management, and direct
6 construction services. Defendant is based in Missouri and employs workers to work on various
7 construction projects nationwide. Plaintiff worked at a project located in Lebec from January 6,
8 2023 through March 15, 2023. Plaintiff did not work on any further projects for Defendant after.

9 On May 30, 2023, Plaintiff sent a letter by certified mail to Defendant providing notice of the
10 PAGA claims pursuant to Labor Code section 2699.3, subd.(a). This was also uploaded to the
11 LWDA website on that same date.

12 On August 15, 2023, Plaintiff's complaint was filed in this action. Defendant filed an
13 Answer on September 19, 2023. The parties then engaged in settlement discussions. Defendant
14 stated that during the PAGA period, which is May 30, 2022 through September 20, 2023, there
15 were 14 aggrieved employees who worked a total of 143 pay periods. There have been no further
16 California projects since the Lebec project ended. The aggrieved employee size is relatively small
17 since Defendant had employees working at the Lebec project only from approximately January
18 2023 to March 2023.

19
20 II. The PAGA Allegations

21 The PAGA allegations relate to the following allegations: a) nonpayment of work off the
22 clock, 2) missed meal and rest breaks, and 3) derivative wage statement penalties. Regarding the
23 nonpayment of work off the clock, the allegation is that Plaintiff and the purportedly aggrieved
24 employees at times worked over their scheduled shifts without receiving overtime.

25 Regarding the missed meal and rest break claims, the allegation is that Plaintiff and the
26 purportedly aggrieved employees had to work through any meal and rest breaks. Regarding the
27 derivative wage statement penalties, the allegation is that with the nonpayment of overtime wages
28 and missed breaks, the wage statements did not list all hours.

1 A. Summary of the Risks and Maximum Liability

2 The primary risk for the above is that even if it can be proved, the relevant timeframe is
3 ostensibly quite short. There are approximately eleven company pay periods at issue during the
4 PAGA period. The maximum PAGA penalties for eleven pay periods for the off the clock
5 allegations is \$14,700 (14 aggrieved employees x \$50 per initial violation = \$700 plus 14
6 purportedly aggrieved employees x \$100 per ten subsequent pay periods = \$14,000).

7 The maximum PAGA penalties for the missed meal break claims is also \$14,700 since the
8 penalties in Labor Code section 558 also apply to meal break violations.

9 The maximum PAGA penalties for the missed rest break claims are \$29,400 (14
10 purportedly aggrieved employees x \$100 per initial violations = \$1,400 plus 14 aggrieved
11 employees x \$200 per ten subsequent pay periods = \$28,000) under Labor Code section 2699.

12 Finally, the maximum penalties for the wage statement claims are \$143,500 (14 purportedly
13 aggrieved employees x \$250 per initial violations = \$3,500 plus 14 aggrieved employees x \$1,000
14 per ten subsequent pay periods = \$140,000) under Labor Code section 2699.

15 Therefore, the total maximum liability PAGA penalties is \$14,700 + \$14,700 + \$29,400 +
16 \$143,500 = \$202,300.

17
18 B. The Settlement is Within the Range of Reasonableness

19 Consequently, the \$10,000 PAGA settlement between Plaintiff and Defendant is 4.9% of
20 the total maximum liability. A PAGA settlement representing 4.9% of the total liability is
21 reasonable. Further, based on the relatively small amount of the figures at issue, Defendant will
22 self-administer the PAGA settlement.

23
24 C. Description of the Settlement Terms

25 With the gross PAGA penalty amount of \$10,000, the following deductions will be made:
26 a) attorney fees of \$3,333.33, and b) costs of \$350.00.

27 Since Plaintiff is separately settling the individual claims through a separate settlement, the
28 costs between the two settlements are roughly split evenly.

1 Thus, the net PAGA settlement amount is \$6,316.67. From the net PAGA settlement
2 amount 75% or \$4,737.50 will be paid to the LWDA and 25% or \$1,579.17 will be paid to the
3 aggrieved employees on a pro rata basis – the average recovery will be \$112.80.

4
5 III. Conclusion

6 Given the above, the parties respectfully request the Court to approve the PAGA settlement.

7
8 Date: February 20, 2024

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9
10 /s/ Adam Rose
11 Attorney for Plaintiff
12 Selvin Ramirez Batres
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