

DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Attorneys for Plaintiff Andrea Mendoza, on behalf of herself and all “aggrieved employees” pursuant to Labor Code § 2698 et seq.

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

ANDREA MENDOZA, on behalf of
herself and all “aggrieved employees”
pursuant to Labor Code § 2698 et seq.,

Plaintiff,

v.

CP HOMECARE INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: ECU003378

Assigned to the Hon. L. Brooks Anderholt, Dept. 9

**STIPULATION AND [PROPOSED] ORDER
APPROVING SETTLEMENT OF PRIVATE
ATTORNEYS GENERAL ACT CLAIMS AND
DISMISSING ACTION WITH PREJUDICE**

Complaint Filed: February 14, 2024

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1. Plaintiff filed her Representative Action Complaint against Defendant on February 14, 2024, seeking civil penalties pursuant to the Private Attorneys General Act (“PAGA”), California Labor Code section 2698 *et seq.* See Declaration of Daniel F. Gaines (“Gaines Decl.”) at ¶ 7.

a. Civil penalties on behalf of caregivers based on Defendant's alleged violation of Labor Code sections 226.7 and 512, for the alleged ***underlying*** failure to provide proper meal and rest periods;

c. Civil penalties on behalf of caregivers for alleged improper wage statements under Labor Code section 226, including *derivative* civil penalties stemming from the alleged underlying failure to provide proper meal and rest periods;

e. ***Non-derivative*** civil penalties on behalf of caregivers for an alleged failure by Defendant to reimburse employees under Labor Code section 2802 for necessary business expenses; and

¹ Plaintiff and Defendant are collectively referred to herein as “Parties.”

1 purported violation of Labor Code section 246, stemming from an alleged failure to provide notices
2 itemizing the caregivers' respective amounts of available paid sick-leave. *See* Gaines Decl. at ¶¶
3 8(a) – (f).

4 3. Plaintiff contends that, on May 26, 2023, and July 20, 2023, she exhausted her
5 administrative remedies for her PAGA claim by sending letters via online submission to the
6 California Labor and Workforce Development Agency (“LWDA”), and via certified mail to
7 Defendant, setting forth the facts and theories for the above-described alleged violations. *See*
8 Gaines Decl. at ¶ 6; **Exhibit B** and **Exhibit C**.

9 4. Based on the foregoing, the within action concerns all individuals who were
10 employed by Defendant as non-exempt in-home caregivers at any time from May 26, 2022, through
11 February 16, 2024. May 26, 2022, is the date one year prior to the date when Plaintiff purported
12 exhausted her administrative remedies for her PAGA claim, and these individuals are referred to
13 herein as the “Allegedly Aggrieved Employees.” *See* Gaines Decl. at ¶ 9.

14 5. Since May 26, 2023, the Parties have been actively engaged in settlement
15 discussions relating to the within action, including exchanging information and documents
16 sufficient to enable the Parties to meaningfully discuss potential resolution. In connection with this
17 information exchange, Defendant has identified a total of approximately ninety Allegedly
18 Aggrieved Employees. *See* Gaines Decl. at ¶¶ 10-13.

19 6. Defendant denies all of the allegations made by Plaintiff in the within action, and
20 denies having committed any misconduct, statutory or regulatory violation, wrongdoing, or any
21 other actionable conduct. *See* Gaines Decl. at ¶ 14.

22 7. This case involves arguable questions of fact and law, which the Parties desire to
23 settle. A copy of the Settlement Agreement and Release Under the California Labor Code Private
24 Attorneys General Act (“Agreement”) is attached the concurrently filed Gaines Decl. as **Exhibit**
25 **D**.

26 8. The Parties agree that the settlement memorialized in the above-referenced
27 Agreement represents a fair compromise of Plaintiff’s PAGA claim, including the related costs of
28

1 litigation and risk. The Parties negotiated the Agreement only after such discovery and
2 investigation had been performed. *See* Gaines Decl. at ¶¶ 11-16.

3 9. PAGA provides that the LWDA may assess and collect civil penalties from
4 employers for violations of certain provisions of the Labor Code. *See* Cal. Lab. Code § 2699(a).
5 PAGA also provides that, if an “aggrieved employee” duly complies with certain administrative-
6 exhaustion requirements, the employee may, “as an alternative” to enforcement by the LWDA,
7 bring a civil action under PAGA to recover civil penalties for the benefit of the LWDA. *See id.*
8 “[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to
9 the [State] . . . and 25 percent to the aggrieved employees.” *Id.* § 2699(i).

10 10. PAGA requires court approval of any settlement of any PAGA claim. *See id.*
11 § 2699(l)(2). Section 2699 also provides that, even if a PAGA claim is not settled and instead
12 proceeds to a judgment against an employer, the court has discretion to “award a lesser amount
13 than the maximum civil penalty.” *Id.* § 2699(e)(2).

14 11. Based on the information and documents obtained through informal discovery,
15 Plaintiff assesses the maximum value of the PAGA claims (without stacking) to be approximately
16 \$149,200.00 (at the rate of a \$100.00 penalty for 1,492 total pay periods at issue for approximately
17 90 employees during the applicable time frame). *See* Gaines Decl. at ¶¶ 11–16. The amount of the
18 settlement reflected in the Agreement is \$40,000.00, which represents over 26% of the maximum
19 recoverable discretionary penalties, and includes an apportionment of attorneys’ fees and costs and
20 a Service Award to Plaintiff. *Id.* at ¶ 17.

21 12. The Agreement provides as follows:

22 a. In exchange for the limited release set forth in the Agreement, Defendant
23 agrees to pay the total sum of \$40,000.00 (“Gross PAGA Fund”) to the State of California and to
24 the Allegedly Aggrieved Employees, after deducting (i) settlement-administration expenses to be
25 incurred by the neutral third-party settlement administrator selected by the Parties, currently
26 estimated to be \$3,000.00; (ii) Plaintiff’s counsel’s fees and costs in an amount totaling up to 35%
27 of the Gross PAGA Fund, plus amounts for actually incurred and documented attorneys’ expenses,
28

1 presently estimated to be approximately \$500.00; and (iii) a service award to Plaintiff in the amount
2 of \$5,000.00, to compensate her for her time and effort on behalf of the Allegedly Aggrieved
3 Employees. (Gaines Decl. Ex. D at §§ 1.K, 1.N, 2.) The funds available for distribution to the
4 State (via the LWDA) and to the Allegedly Aggrieved Employees after deducting the foregoing
5 amounts are referred to as the “Net PAGA Fund.” Based on the foregoing numbers, the Net PAGA
6 Fund equals approximately \$17,500.00 (= \$40,000.00 – \$14,000.00 in attorneys’ fees – \$500.00 in
7 attorneys’ costs – \$3,000.00 in settlement-administration expenses – \$5,000.00 for Plaintiff’s
8 service award).

9 b. Pursuant to section 2699 of PAGA, a total of approximately \$13,125.00 (i.e.,
10 75%) of the Net PAGA Fund shall be paid to the LWDA. (Gaines Decl. Ex. D at §§ 1.L, 2.) Also
11 pursuant to section 2699, the remaining approximately \$4,375.00 (i.e., 25%) of the Net PAGA Fund
12 shall be paid to the Allegedly Aggrieved Employees (“Caregiver PAGA Payment”). (Gaines Decl.
13 Ex. D at §§ 1.C, 2.)

14 c. The entire Caregiver PAGA Payment shall be divided pro rata among the
15 Allegedly Aggrieved Employees (including Plaintiff), based on the number of weeks that each
16 worked for Defendant in California during the period of time from May 26, 2022, through February
17 16, 2024. (Gaines Decl. Ex. D at § 2.) Since the Gross PAGA Fund constitutes civil penalties, the
18 amounts paid from the Caregiver PAGA Payment shall be issued via an IRS Form 1099. (Gaines
19 Decl. Ex. D at § 2.) In addition, since it is estimated that there are only approximately ninety
20 Allegedly Aggrieved Employees, each Allegedly Aggrieved Employee’s net share of the Caregiver
21 PAGA Payment will, on average, be \$48.61 (= (\$4,375.00 Caregiver PAGA Payment ÷ 90
22 Allegedly Aggrieved Employees). This is more than what aggrieved employees in other PAGA
23 settlements typically receive. *See, e.g., Roe v. SFBSC Mgmt., LLC*, Nos. 14-cv-03616-LB, 16-cv-
24 03371-LB, 17-cv-00138-LB, 17-cv-052880LB, 17-cv-06971, 19-cv-03960-LB, 2022 U.S. Dist.
25 LEXIS 215122, at *7, 19 (N.D. Cal. Nov. 29, 2022) (approving a \$125,000.00 PAGA payment
26 from a \$6.5 million class-wide settlement, with \$31,250.00 of the PAGA payment going to 8,402
27 class members, resulting in an average civil-penalty payment to aggrieved employees of \$3.72);
28

1 *Roe v. Jose Torres L.D. Latin Club Bar, Inc.*, No. 19-cv-06088-LB, 2020 U.S. Dist. LEXIS 156837,
2 at *1, 4–5 (N.D. Cal. Aug. 27, 2020) (approving a \$2,000.00 PAGA payment from a \$135,000.00
3 class-wide settlement, with \$500.00 of the PAGA payment going to 93 class members, resulting in
4 an average civil-penalty payment to aggrieved employees of \$5.38); *Turner v. Motel 6 Operating*
5 *L.P.*, No. CV 17-2544 PSG (SSx), 2018 WL 6977474, at *1, 7 (C.D. Cal. Nov. 6, 2018) (approving
6 a \$20,000.00 PAGA payment from a \$1.36 million class-wide settlement, with \$5,000.00 of the
7 PAGA payment going to 2,780 class members, resulting in an average civil-penalty payment to
8 aggrieved employees of \$1.80); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, No. 1:13-cv-
9 00474-DAD-BAM, 2017 WL 749018, at *5, 9 (E.D. Cal. Feb. 27, 2017) (approving a \$20,000.00
10 PAGA payment from a \$2.35 million class-wide settlement, with \$5,000.00 of the PAGA payment
11 going to 2,730 class members, resulting in an average civil-penalty payment to aggrieved
12 employees of \$1.83).

13 d. Within thirty calendar days after the date that the Court has signed the
14 Proposed Order accompanying this Stipulation, Defendant shall provide the settlement
15 administrator with the best information in Defendant’s possession, custody, or control with respect
16 to each Allegedly Aggrieved Employee’s last-known name, last-known address, Social Security
17 number, last-known telephone number, and dates of employment. (Gaines Decl. Ex. D at § 2.)
18 Within fifteen calendar days of receiving the data, the administrator shall use the United States
19 Postal Service National Change of Address Database to locate updated addresses for each Allegedly
20 Aggrieved Employee, and shall mail a check to each Allegedly Aggrieved Employee for his or her
21 share of the Caregiver PAGA Payment. (Gaines Decl. Ex. D at § 2.) The checks will be
22 accompanied by a mutually drafted letter advising them as to what the Caregiver PAGA Payment
23 is for; a template copy of that letter is appended to the Agreement as Exhibit 1. (Gaines Decl. Ex.
24 D at §§ 1.C, 2.) Any mailed checks that are returned as non-delivered shall be re-mailed to the
25 forwarding address affixed thereto. (Gaines Decl. Ex. D at § 2.) If no forwarding address is
26 provided, the Settlement Administrator shall promptly attempt to determine a correct address by
27 lawful use of a robust skip-tracing procedure or other search. (Gaines Decl. Ex. D at § 2.)

1 e. Settlement checks issued to the Allegedly Aggrieved Employees will expire
2 180 calendar days after the date that they are issued. (Gaines Decl. Ex. D at § 2.) Any unclaimed
3 funds after that period shall be remitted by Defendant to the LWDA. (Gaines Decl. Ex. D at § 2.)
4 Accordingly, none of the PAGA Fund will revert to Defendant. (Gaines Decl. Ex. D at § 2.)

5 f. Upon the date that the Court grants approval of the Agreement, the Allegedly
6 Aggrieved Employees (including Plaintiff) will be deemed to have fully released and forever
7 discharged any and all claims against Defendant and Defendant's current and former subsidiaries,
8 parents, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials,
9 directors, managing agents, attorneys, human-resources representatives, payroll representatives,
10 personal representatives, executors, and shareholders, including their respective pension, profit-
11 sharing, savings, health, and other employee benefits plans of any nature, the successors of such
12 plans, and those plans' respective current or former trustees and administrators, agents, employees,
13 and fiduciaries, for civil penalties under PAGA that were or could have been brought based on the
14 facts and theories asserted in the Complaint. (Gaines Decl. Ex. D at § 4.) The Agreement recites
15 that it is expressly understood and agreed that this release does not apply to any transaction, cause,
16 event, matter, or thing whatsoever that occurs, arises out of, or results from, any act or event
17 occurring after February 16, 2024. (Gaines Decl. Ex. D at § 4.) Likewise, the Agreement recites
18 that it is expressly understood and agreed that the release does not absolve Defendant from liability,
19 if any, to the Allegedly Aggrieved Employees for any claims they may assert against Defendant
20 other than those seeking civil penalties through PAGA. (Gaines Decl. Ex. D at § 4.) In other
21 words, the Agreement's release is limited specifically to civil-penalty claims—and then to only
22 those claims based on the specific facts and theories asserted in Plaintiff's Complaint.²

23 13. Based on their extensive experience litigating over 100 representative actions,
24 counsel for Plaintiff believes the settlement embodied in the Agreement is fair and reasonable, and
25 that it warrants approval by the Court. *See* Gaines Decl. at ¶¶ 2–5; **Exhibit A**. Defendant's counsel

26 ² Unlike all of the other Allegedly Aggrieved Employees, Plaintiff herself is entering into a
27 general release with Defendant. (Gaines Decl. Ex. D at § 5.) This is a further reason for approving
28 a service award for her in the amount of \$5,000.00.

1 has reached a similar conclusion, based, in part, on the following:

2 a. Defendant contends that Plaintiff and the Allegedly Aggrieved Employees
3 are subject to California’s Domestic Workers Bill of Rights, section 1450 *et seq.* of the Labor Code.
4 Accordingly, Defendant’s position is that neither Plaintiff nor any of the Allegedly Aggrieved
5 Employees are entitled to meal or rest breaks under the law. *See Liday v. Sim*, 40 Cal. 5th 359,
6 371–72 (2019) (“Thus, the provisions restricting domestic workers’ number of hours and days of
7 work, providing meal and rest periods, and requiring employers to keep certain records, among
8 others did not apply to [the plaintiff].”). Defendant therefore contends that the primary underlying
9 violation asserted by Plaintiff, as well as all alleged violations that are derivative thereof, fail as a
10 matter of law.

11 b. On August 22, 2023, Defendant submitted a notice to the LWDA purporting
12 to demonstrate that Defendant had cured any alleged violation of section 246 of the Labor Code as
13 to all Allegedly Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(c)(2)(A) (providing that an
14 employer alleged to have violated various provisions of the Labor Code may “cure the alleged
15 violation,” which can eliminate the plaintiff’s ability to assert a PAGA claim). Defendant also
16 provided cure notices to all Allegedly Aggrieved Employees. Plaintiff has not contested
17 Defendant’s cure through any submission to the LWDA. Defendant therefore contends that
18 Plaintiff cannot collect civil penalties for any purported violation of Labor Code section 246.

19 c. Even if Plaintiff could assert claims against Defendant for civil penalties
20 under PAGA, any recovery she might obtain would be subject to a discretionary reduction by the
21 Court. *See id.* § 2699(e)(2) (stating that the court has discretion to “award a lesser amount than the
22 maximum civil penalty”). *See* Gaines Decl. at ¶ 14.

23 14. The Parties respectfully request that the Court enter the accompanying Order
24 approving the settlement memorialized by the Agreement and dismissing this Action with
25 prejudice. *See* Gaines Decl. at ¶ 18. The Parties further agree that, after entry of the Order, and
26 pursuant to California Code of Civil Procedure § 664.6, the Court shall retain exclusive and
27 continuing equity jurisdiction of this action over all Parties and Aggrieved Employees for purposes
28

1 of supervising, implementing, enforcing, construing, administering, and interpreting the
2 Agreement, as well as any matters related or ancillary thereto, including under California Code of
3 Civil Procedure section 664.6. *Id.* at ¶ 19.

4 15. Plaintiff has submitted a copy of the Settlement Agreement, together with this
5 Stipulation and the Declaration of Daniel F. Gaines, to the LWDA as required by PAGA. *See*
6 Gaines Decl. at ¶ 20; **Exhibit E**. As of the full execution of this Stipulation, neither Plaintiff's
7 counsel nor Defendant's counsel has received any objection from the LWDA to the terms of the
8 Agreement.

9 Based on the foregoing, Plaintiff and Defendant **HEREBY STIPULATE** that the Court
10 execute the Proposed Order granting approval of the Parties' Settlement Agreement and Release
11 Under the California Labor Code Private Attorneys General Act.

12 **IT IS SO STIPULATED.**

13 **ATTORNEYS FOR PLAINTIFF:**

14 Dated: February 28, 2024

Respectfully submitted,

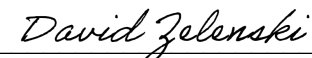
16 GAINES & GAINES
A Professional Law Corporation

17 By: 
18 Daniel F. Gaines
Alex P. Katofsky

19 **ATTORNEYS FOR DEFENDANT:**

20 Dated: February 28, 2024

ZELENSKI LAW, PC

22 By: 
23 David Zelenski
Abigail Zelenski

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1. The Court finds the Settlement was entered into in good faith, that the Settlement is fair, reasonable and adequate, and that the Settlement satisfies the standards and applicable requirements for approval of PAGA representative actions under California law.

3. Upon entry of this Order, the Parties and the Settlement Administrator shall effectuate all terms of the Settlement based on the provisions and timelines set forth in the Settlement Agreement.

5. Upon entry of this Order, the Parties shall effectuate all terms of the Settlement based on the provisions and timelines set forth in the Settlement Agreement.

7. Plaintiff is to submit a copy of this Order to the California Labor and Workforce Development Agency within ten calendar days after entry of this Order.

Dated: _____

-10-