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as an individual and on behalf of all employees similarly situated

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

SUSANA HERNANDEZ DE MARTINEZ,
individually, and on behalf of all others
similarly situated,

Plaintiff,

vs.

FACILITY SERVICES PARTNERS, INC., a
California Corporation; and DOES 1 through
10, inclusive,

Defendant

Case No.: CVRI2304625

[Assigned for all purposes to Hon. Eric A Keen,
Dept. 6]

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR AN ORDER
APPROVING SETTLEMENT OF CLAIMS
BROUGHT PURSUANT TO THE PRIVATE
ATTORNEY GENERAL'S ACT OF 2004**

Reservation N: 353152327678

Date: June 24, 2024

Time: 8:30a.m.

Courtroom: Dept. 6

Judge: Hon. Eric A Keen

Action Filed: September 5, 2023

Trial Date: Not Set

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

Plaintiff SUSANA HERNANDEZ DE MARTINEZ (“Plaintiff”) and Defendant FACILITY SERVICES PARTNERS, INC. (“Defendant”) (Plaintiff and Defendant are the “Parties”) have reached terms of settlement of this action alleging a claim for relief pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.* (“PAGA”).

Pursuant to PAGA, Plaintiff, on behalf of the Parties, has filed a motion for approval of the settlement of the claims asserted against Defendant in this action. Specifically, Plaintiff moves for an order:

1. granting approval of the terms of the Agreement pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, including the amount of the settlement; the amount of distributions to the State and Aggrieved Employees; the amounts allocated to attorney’s fees and costs; and, the amount allocated to the settlement administrator; and,

2. directing disbursement of the Gross Settlement Amount pursuant to the terms of the Agreement.

The PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE (referred to as the “Agreement,” or “Settlement,” and attached to the Declaration of Lilit Tunyan as Exhibit 1) is conditioned upon the Court’s approval. Capitalized terms in this Order have the same meaning as in the Settlement unless indicated otherwise. A summary of the terms of the Settlement is as follows:

- (a) The Aggrieved Employees: The Aggrieved Employees (also known as the “PAGA Members”) are: “All non-exempt employees who are or were employed by Defendant within the State of California from July 2, 2022, through the date of entry of order for PAGA settlement approval or 60 days from April 6, 2024, whichever is earlier.” It is estimated that there are approximately 3,020 pay periods as of April 6, 2024. (Agreement, ¶ 9.)
- (b) No Reversion: The Settlement is non-reversionary. (Agreement, ¶ 6.)
- (c) Gross Settlement Amount: Defendant agrees to pay the maximum sum of

1 **\$165,000.00** (hereinafter referred to as the “Gross Settlement Amount” or
2 “GSA”) for settlement of the PAGA Penalties, which shall be inclusive of
3 Plaintiff’s Counsel’s attorney’s fees and costs and the settlement administrator’s
4 costs. (Agreement, ¶ 6.)

5 (d) Net Settlement Amount: At least **\$91,715.55** will be available for distribution to
6 the Aggrieved Employees and the LWDA. Of this amount, the LWDA will
7 receive at least **\$68,786.66** under the Agreement, and Aggrieved Employees will
8 receive at least **\$22,928.89**. (Agreement, ¶ 6.c.)

9 (e) Attorney’s Fees: Plaintiff’s Counsel request an award of attorney’s fees in the
10 amount of **\$55,000.00**, which is one third of the GSA. (Agreement, ¶ 6.a.)

11 (f) Litigation Costs: Plaintiff’s Counsel’s litigation costs are capped to a maximum
12 amount of **\$16,000.00**. Those actual costs are **\$14,344.45** which include the
13 future motion filing, final report filing and joint stipulation fees. Therefore,
14 **\$14,344.45** is requested, by Plaintiff. (Agreement, ¶¶ 6.a, 13.b.)

15 (g) Settlement Administration: Payment to Aggrieved Employees and administration
16 will be accomplished through third-party settlement administrator ILYM Group,
17 Inc., which has agreed to perform Settlement Administrator duties for a flat fee
18 not to exceed **\$3,950.00**, which is reasonable, based on all of the services offered.
19 (Agreement, ¶ 12)

20 (h) General Release by Plaintiff: The Parties have entered into a separate settlement
21 and release agreement for the general release of Plaintiff’s individual claims
22 against Defendant. Upon approval of this PAGA settlement Plaintiff will receive
23 **\$10,000.00** as a consideration for general release of her claims beyond claims in
24 which action and for representing all Aggrieved Employees which shall be paid
25 by Defendant in addition to the GSA. (Agreement, ¶ 2.)

26 (i) Uncashed Checks: Funds represented by checks returned as undeliverable after a
27 re-mailing, and funds represented by checks remaining un-cashed for more than
28 180 days after issuance, shall be transmitted to the California Controller's

Unclaimed Property Fund in the name of the Aggrieved Employee. (Agreement, ¶ 13.c.)

(j) Release: In exchange for the above settlement consideration, Defendant shall be entitled to a release from the LWDA and each and every Aggrieved Employee, including Plaintiff. (Agreement, ¶ 2.)

(k) Tax Allocation: The Settlement Payments to Aggrieved Employees are classified as other miscellaneous income and will be allocated as 100% penalties, which will be reported on IRS Form 1099-MISC, if required. (Agreement, ¶ 10.)

(l) No Right to Opt-out: There is no statutory right for any Aggrieved Employee to object, opt out or otherwise exclude themselves from the Settlement. (Agreement, ¶ 5.)

(m) Notice to LWDA: The Declaration of Lilit Tunyan confirms that notice was provided to the LWDA and attaches the confirmatory submission documents. (Declaration of Lilit Tunyan, hereinafter “Tunyan Decl.”, ¶ 47 and Exh. 3.)

After reviewing the Settlement and other related documents, and the filings submitted by Plaintiff, **IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Court hereby GRANTS approval of the PAGA settlement upon the terms and conditions set forth in the Settlement attached as Exhibit 1 to the Declaration of Lilit Tunyan. The Court finds that the terms of the proposed settlement are reasonable. In granting approval of the settlement the Court has considered the factors identified in *O'Connor v. Uber Technologies*, No. 13-CV-03826-EMC, 2016 WL 4398271 (N.D. Cal. Aug. 18, 2016), *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998), *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996), and other authority providing a coherent framework for evaluating this Settlement.

2. The Court hereby identifies the Aggrieved Employees as:

All non-exempt employees who are or were employed by Defendant within the State of California from July 2, 2022 to June 5, 2024.

This Order incorporates by reference the definitions in the Settlement, and all capitalized terms defined

1 therein shall have the same meaning in this Order as set forth in the Settlement.

2 3. The Court hereby finds the Settlement was the product of informed, non-collusive
3 negotiations conducted at arms' length by the Parties. In making these findings, the Court considered
4 Defendant's potential liability, the benefit to the State of California, allocation of settlement proceeds
5 among Aggrieved Employees, and the fact that a settlement represents a compromise of the Parties'
6 respective positions rather than the result of a finding of liability at trial. The Court further finds that the
7 terms of the Settlement have no obvious deficiencies. The Court finds that the risks of further
8 prosecution are substantial and include the risks that (1) penalties would be reduced after evaluation of
9 the totality of the circumstances, or (2) that no penalties would be awarded for some or all of the alleged
10 violations.

11 4. The Court hereby approves ILYM Group, Inc. to serve as the settlement administrator
12 ("Settlement Administrator"). The Settlement Administrator will be paid pursuant to the Agreement's
13 terms for such distribution, in the requested amount of \$3,950.00 out of the Gross Settlement Amount to
14 effectuate Administration. Defendant will provide the Settlement Administrator with a list of Aggrieved
15 Employees within 15 days from entry of this order that Defendant will compile from its records, which
16 will include each Aggrieved Employee's last known full name, last known address, last known telephone
17 number, Social Security number and employee ID number, start and end dates of employment as a non-
18 exempt and/or hourly-paid employee of Defendant in California during the PAGA Period, and other such
19 mutually agreed upon information by the Parties as may be necessary for the Settlement Administrator to
20 independently calculate and review the Pay Periods attributed to each Aggrieved Employee, and the
21 Settlement Administrator will calculate each Aggrieved Employee's estimated share of the twenty-five
22 percent (25%) portion of the PAGA Payment. The Settlement Administrator will also establish
23 Qualified Settlement Fund Escrow Account, prepare, administer, and distribute settlement checks to the
24 Aggrieved Employees, including necessary tax forms (W2 and/or 1099), calculate and withhold all
25 applicable state and federal taxes, should any disbursements be returned to ILYM Group's office as
26 undeliverable, ILYM Group will attempt to locate an update address using the NCOA database and/or
27 other skip trace efforts and will promptly remail the disbursement, redistribute all uncashed checks to the
28 California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

1 5. Pursuant to the Agreement, the amount distributed as penalties under PAGA shall be
2 \$165,000.00, less administration costs, attorneys' fees, and costs awarded to Plaintiff's counsel. After
3 awards, the amount remaining to distribute as penalties is \$91,715.55. The LWDA shall receive 75% of
4 the penalties allocated, which is \$68,786.66. Aggrieved Employees shall receive 25% of the penalties
5 allocated, which is \$22,928.89.

6 6. The Court hereby awards Counsel attorneys' fees in the amount of \$55,000.00. The
7 Court finds that the attorneys' fees are reasonable compared to amounts routinely approved in similar
8 settlements and as guided by the California Supreme Court's decision concerning the awarding of fees
9 from monetary funds for class members. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).
10 Counsel proceeded on a contingency basis despite the uncertainty of any fee award. Counsel were
11 necessarily precluded from pursuing other potential sources of fees because of work in connection with
12 this Action. The Court observed that this is not a class action. It is more akin to contingent
13 representation with an additional requirement of Court review due to the qui tam nature of a PAGA
14 claim. Attorneys' fees that are fifty percent of a common fund are typically considered the upper limit,
15 with thirty to forty percent commonly awarded in cases where the settlement is relatively small. *See Van*
16 *Vranken v. Atlantic Richfield Company*, 901 F. Supp. 294 (N.D. Cal. 1995) (stating that most cases
17 where 30-50 percent was awarded involved "smaller" settlement funds of under \$10 million). Based on
18 these considerations, including the lodestar cross-check, a fee award of one third of the total settlement
19 amount is reasonable.

20 7. The Court hereby awards Counsel litigation costs in the total amount of \$14,334.45.

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

23 9. The Court approves, both as to form and content, the Notice of PAGA settlement to
24 Aggrieved Employees attached hereto as **Exhibit 1**.

25 10. Pursuant to the terms of the Settlement, the released persons and entities include
26 Defendant (as defined above) and all of their current and former officers, directors, employees and agents
27 (referred to in the Settlement as the "Released Parties").

28 11. Upon entry of the Order approving this Settlement and the Judgment thereon, PAGA

claims are released as follows:

Upon the Effective Date and full funding of the Gross Settlement Amount and General Release Payment to Plaintiff, and except as to the rights and obligations created by the Settlement Agreement, Plaintiff and Aggrieved Employees, individually and on behalf of their descendants, marital community, dependents, heirs, executors, administrators, representatives, attorneys, successors and assigns, and the State of California, on behalf of itself and its administrators, representatives, and assigns, will be deemed to have knowingly and voluntarily released and forever discharged Defendant, including Defendant's parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, insurers, shareholders, partners, members, officers, directors and agents thereof, both individually and in their business capacities (collectively, the "Released Parties"), to the full extent permitted by law, of and from the Lawsuit and from any and all claims asserted or that could have been asserted, arising during the period from July 2, 2022, through June 5, 2024, for civil penalties under California Labor Code section 2698, *et seq.* ("PAGA") as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the Complaint and in PAGA Notice, including but not limited to, for failure to pay minimum, regular, and overtime wages, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to timely pay wages at termination, failure to furnish accurate itemized wage statements, failure to reimburse necessary business expenses, and failure to maintain accurate records, and for violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 227.3, 510, 512, 174.5, 1197, 1198, and 2802, and the applicable Industrial Welfare Commission Wage Orders, whether known or unknown, suspected or unsuspected, concealed or hidden, that were alleged in the Action and/or the PAGA Notice, or that could have been alleged in the Action and/or PAGA Notice based on the factual allegations contained therein, which Plaintiff and any Aggrieved Employee have or had at any time through and including the PAGA Period, against any of the Released Parties.

12. The action is DISMISSED WITH PREJUDICE.

13. The Court will enter Final Judgment in accordance with this Order.

14. The Court shall retain jurisdiction with respect to all matters related to the administration and consummation of the Settlement, and any and all claims asserted in, arising out of, or related to the subject matter of the lawsuit, including but not limited to all matters related to the Settlement and the determination of all controversies relating thereto.

IT IS SO ORDERED.

Dated: _____

Hon. Eric A Keen
RIVERSIDE COUNTY SUPERIOR COURT JUDGE

Exhibit “1”

NOTICE OF PAGA ACTION SETTLEMENT

*De Martinez v. Facility Services Partners, Inc., Riverside County Superior Court
Case No. CVRI2304625*

This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE EMPLOYED AS A NON-EXEMPT EMPLOYEE BY DEFENDANT FACILITY SERVICES PARTNERS, INC. (“DEFENDANT”) DURING THE PAGA PERIOD (JULY 2, 2022 through JUNE 5, 2024), THIS PAGA SETTLEMENT AFFECTS YOUR RIGHTS.

A settlement (the “Settlement”) has been reached in the lawsuit entitled *De Martinez v. Facility Services Partners, Inc.*, Case No. CVRI2304625 (the “Action”), asserting claims under the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.* (“PAGA”). The purpose of this Notice is to advise you as to why you have received a portion of the Settlement proceeds. The Settlement fully and finally resolves the Action.

Who is affected by this proposed Settlement?

The Court has designated, for settlement purposes only, the following persons as “Aggrieved Employees” or “PAGA Group Members”:

All non-exempt employees employed by Defendant in California at any time during the PAGA Period (the “PAGA Period” refers to the period of July 2, 2022 to JUNE 5, 2024).

According to Defendant’s records, you are one of the Aggrieved Employees or PAGA Group Members.

What is this case about?

In the Action, Plaintiff Susana Hernandez De Martinez asserted claims that Defendant violated certain provisions of the Labor Code relating to, among other things, non-payment of wages, non-compliance with meal and rest period requirements, reimbursement of business expenses, and non-compliant wage statements. Plaintiff sought only civil penalties on behalf of the California Labor and Workforce Development Agency (“LWDA”) and the other allegedly Aggrieved Employees under the Labor Code Private Attorneys General Act of 2004 (“PAGA”) [Lab. Code § 2699, *et seq.*].

Defendant denied all liability and was confident that it had strong legal and factual defenses to these claims. The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendant that the claims in the Action have merit or that Defendant has any liability to Plaintiff or PAGA Group Members. The Parties acknowledge the risks and uncertainties of continued litigation. Plaintiff’s counsel believes the Settlement is fair, reasonable, and adequate, and is in the best interests PAGA Group Members.

The Court has made no determination about Plaintiff’s allegations asserted in the Action. The Court has determined that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate, and reasonable, and approved the Settlement. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of the claim.

What is the Settlement Formula and My Estimated Settlement Share?

According to Defendant’s records from July 2, 2022 to June 5, 2024 (i.e., the PAGA Period), your estimated number of pay periods worked is [REDACTED] pay periods.

Under the terms of the Settlement, your Individual PAGA Payment is estimated to be \$ [REDACTED].

Each individual PAGA payment was calculated on a pro rata basis (i.e., proportional) based on the number of pay periods worked by each Aggrieved Employee in the PAGA Covered Period divided by the total number of pay periods worked by all Aggrieved Employees during the PAGA Covered Period.

The Settlement Payments to Aggrieved Employees will be allocated as 100% penalties, which will be reported on IRS Form 1099-MISC, if required¹. Your share was calculated based on the number of pay periods you worked for Defendant during the PAGA Period.

¹ One hundred percent (100%) of your Individual PAGA Payment under this Settlement will be considered penalties, and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences, if any, of your Individual PAGA payment. Neither Plaintiff nor Defendant have made any representations or

Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the checks will be transmitted to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

Release By LWDA and Aggrieved Employees

The Court has approved the Parties' Settlement and General Release Agreement (the "Agreement").

Plaintiff, on behalf of herself, the LWDA, and all Aggrieved Employees, acknowledges full and complete satisfaction of and releases and discharges and covenants not to sue Defendant and any Releasee from and with respect to Plaintiff's Released PAGA Claims.

"Released PAGA Claims" means any and all claims asserted or that could have been asserted, arising during the period from July 2, 2022, through June 5, 2024 for civil penalties under PAGA as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the Complaint and in PAGA Notice, including but not limited to, for failure to pay minimum, regular, and overtime wages, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to timely pay wages at termination, failure to furnish accurate itemized wage statements, failure to reimburse necessary business expenses, and failure to maintain accurate records, and for violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 227.3, 510, 512, 174.5, 1197, 1198, and 2802, and the applicable Industrial Welfare Commission Wage Orders, whether known or unknown, suspected or unsuspected, concealed or hidden, that were alleged in the Action and/or the PAGA Notice, or that could have been alleged in the Action and/or PAGA Notice based on the factual allegations contained therein, which Plaintiff and any Aggrieved Employee have or had at any time through and including the PAGA Period, against any of the Released Parties.

"Released Parties" means Defendant, including Defendant's parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, insurers, shareholders, partners, members, officers, directors and agents thereof, both individually and in their business capacities.

The Agreement is intended to be effective as a bar to all Released PAGA Claims. Plaintiff, the LWDA, and Aggrieved Employees shall be forever barred and enjoined from instituting or prosecuting, either directly or indirectly, individually, collectively, and/or representatively, any Released PAGA Claims. This Agreement may be pleaded by any Releasee as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted, asserting any Released PAGA Claim that arose during the PAGA Covered Period.

There is no statutory right for PAGA Group Members to object, opt out or otherwise exclude themselves from this Settlement.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

You may call Settlement Administrator at [REDACTED] with any questions. If your check is lost or misplaced, you should contact Settlement Administrator immediately to request a replacement.

warranties regarding the taxation of your Individual PAGA payment. Nothing within this notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended).