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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

JESSICA PLUMMER, PAIGE RIEBOLDT, and
DANIELLE DEVENNEY individually and on
behalf of all other similarly situated aggrieved
employees,

Plaintiffs,

vs.

FLEXCARE, LLC and DOES 1-50, inclusive,

Defendants

CASE NO.: 23CV050251

[Assigned for all purposes to Judge Julia
Spain, Department 520]

**SUPPLEMENTAL MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF PLAINTIFFS'
UNOPPOSED MOTION FOR
APPROVAL OF PAGA SETTLEMENT,
ATTORNEYS' FEES AND COSTS, AND
SERVICE AWARDS**

Hearing Date: May 16, 2024

Time: 2:00 p.m.

Dept.: 520

Reservation No.: A-50251-002

Complaint Filed: November 6, 2023

Trial Date: Not Set

[Filed concurrently with Supplemental
Declaration of Eve H. Cervantez and
Accompanying Exhibits; Amended Proposed
Order]

1 Plaintiffs Jessica Plummer, Paige Rieboldt, and Danielle Devenney (“Plaintiffs”) submit this
2 supplemental memorandum in support of their Motion for Approval of PAGA Settlement.

3 Following this Court’s April 18, 2024 Order, the parties agreed to and executed an amended
4 Settlement Agreement, attached as Exhibit A to the Supplemental Declaration of Eve H. Cervantez,
5 intended to address the Court’s concerns.

6 *First*, the amended Settlement Agreement reduces the attorneys’ fees that Plaintiffs’
7 attorneys are requesting to thirty percent (30%) of the gross settlement amount of \$860,000, totaling
8 \$258,000, to reflect this Court’s benchmark. (See Cervantez Supplemental Decl., Ex. A §3(h), at
9 13).

10 *Second*, the parties have amended the Settlement Agreement to reflect that the scope of the
11 release in this case does not release any claims of the PAGA Members, as those PAGA Members
12 are not parties to this case or the settlement agreement. Instead, the release expressly covers the
13 LWDA’s claims for statutory penalties under PAGA, and thus precludes Plaintiffs or PAGA
14 members from bringing those claims “as the proxy or agent of the [LWDA].” (*ZB, N.A. v. Superior*
15 *Court of San Diego County* (2019) 8 Cal.5th 175, 185.) To the extent that the Parties have
16 misunderstood the Court’s concern with the scope of the release, Plaintiffs would request a hearing
17 on this motion to ensure that any further amendments to the Settlement Agreement fully address the
18 Court’s concerns. (See Cervantez Supplemental Decl., Ex. A § 1(p)-(q), at 4-6).

19 For the benefit of the Court’s review, the changes to the definitions of Released Claims
20 (section 1(p)) and Released Parties (section 1(q)) from the initial settlement agreement are
21 reproduced below, in a track changes format:

22 (p) “Released Claims” ~~with respect to Plaintiffs, the PAGA Members, and the LWDA~~ means
23 any and all ~~claims individual and representative claims~~ for penalties and attorneys’ fees and
24 costs recoverable under PAGA which ~~Plaintiffs, PAGA Members, and/or~~ the LWDA had,
25 may claim to have, or could have alleged against Released Parties, or which Plaintiffs or
26 PAGA Members could have brought as proxy or agent of the LWDA, arising out of the facts
27 and violations alleged in the Complaint or the PAGA Notices, including PAGA penalties
28 for the following: bait-and-switch claims under Labor Code § 970; failure to pay overtime
premiums under §§ 223, 510, 1194, and 1198; failure to indemnify employees for expenses
and losses under § 2802; failure to indemnify employees for want of ordinary care under §
2800; failure to furnish accurate wage statements under §§ 226, 1174, 1175; unlawful failure
to make payment of all wages due upon termination under §§ 201, 202, 203, and/or 204.

1 This release shall apply to claims under PAGA arising during the PAGA Period and will be
2 binding and effective upon Plaintiffs, PAGA Members, and the LWDA regardless of
3 whether the PAGA Member cashes his or her settlement check. This release does not apply
to claims other than PAGA claims for civil penalties brought by or on behalf of the LWDA.

4 (q) “Released Parties” means Defendant, and its past, present, and future agents of all types,
5 employees, members, managers, officers, directors, partners, trustees, shareholders, owners,
6 principals, attorneys, parents, subsidiaries, related entities, divisions, joint venturers, assigns,
7 partners, indemnitees, persons to whom Defendant owes a duty to defend, predecessors,
8 successors, affiliated organizations, insurers, joint employers, and all persons acting by or
9 through or in concert with any of them, and each of them, including any person or entity
10 which Plaintiffs might seek to hold liable as joint employers for the claims asserted in the
11 Litigation. “Released Parties” also means, but only with respect to shifts PAGA Members
12 worked for Defendant, entities with whom Defendant contracted to provide healthcare staff,
13 hospital and/or medical facility site employers of Plaintiffs, managed-service providers or
14 staffing agencies for whom Defendant supplied healthcare staff, and all persons acting by or
15 through or in concert with any of them, and each of them, including any person or entity
16 which Plaintiffs might seek to hold liable as joint employers for the claims asserted in the
17 Litigation. –The Parties agree that the release provided in this Agreement is intended to
18 completely and fully resolve all Released Claims that Plaintiffs and PAGA Members have or
19 could have brought on behalf of the LWDA against any person or entity relating to shifts
20 PAGA Members worked for Defendant and that specifically listing each released person or
21 entity by name would be unduly lengthy and burdensome. Accordingly, the Parties agree
22 that PAGA Members are expressly releasing any persons or entities included in this
23 definition even if such person or entity is not specifically named or whether such person or
24 entity is known to Plaintiffs’ Counsel or PAGA Members. The definition of Released Parties
25 shall be interpreted as broadly as possible and no persons or entities are expressly excluded
26 from the definition of Released Parties.

27 For the foregoing reasons and those set forth in our opening briefs, the Court should approve
28 the PAGA settlement, the award of attorneys’ fees and costs, and the service award.

23 Dated: May 9, 2024

/s/ Eve H. Cervantez

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