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SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

JOAN S. WALTER, an individual on behalf of herself and the STATE OF CALIFORNIA, as Private Attorney General, Plaintiffs, vs. CAPO BEACH HEALTHCARE, LLC; VALLEY POST-ACUTE AND REHAB, LLC, a California Limited Liability Company; and DOES 1 through 20, inclusive, Defendants.	CASE NO. 30-2024-01409294-CU-WT-CXC [Assigned for all purposes to Hon. Lon F. Hurwitz, Dept. CX103] **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF UNOPPOSED MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004** *[Concurrently filed with Notice of Motion and Motion; Decl. of Lauren E. Grochow; and [Proposed] Order]* Hearing Date: March 14, 2025 Hearing Time: 1:30 p.m. Dept.: CX103 Complaint Filed: June 24, 2024 Trial Date: N/A

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Joan S. Walter ("Plaintiff") hereby seeks court approval of a settlement of a pending claim under the Private Attorneys General Act of 2004 ("PAGA"), which was initiated by Plaintiff's Counsel submitted the PAGA Notice on Plaintiff's behalf to California's Labor and Workforce Development Agency ("LWDA") and Defendant Capo Beach Healthcare, LLC ("CBH"), dated February 12, 2023, thereby initiating LWDA Case Number LWDA-CM-1010584-24. On May 22, 2023, Plaintiff submitted an Amended PAGA Notice to the LWDA, CBH, and Defendant Valley Post-Acute and Rehab, LLC ("VPAR" and together with CHB, "Defendants"). Plaintiff's PAGA Notices detailed her intent to seek civil penalties for Defendant's alleged violations of California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226, 226.3, 226.7, 227.3, 245-248.5, 233-234, 248.2, 248.6, 510, 512, 551, 552, 558, 1174(d), 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802.

On June 24, 2024, Plaintiff filed a complaint in Orange County Superior Court, thereby initiating the above-captioned Action, asserting individual claims in addition to her PAGA Claim. To be clear, the following settlement does not address Plaintiff's currently pending individual claims. Those claims are not the subject of the PAGA Claim settlement.

The $88,080.00 PAGA Settlement is for approximately 209 employees for the period of July 1, 2023 through December 31, 2024. As detailed herein, the corresponding allocation for civil penalties therein, is more than fair, adequate, and reasonable and constitutes a noteworthy recovery and is sufficient enough to deter any further violations and encourage compliance. The Parties reached their settlement after significant negotiations, which included that assistance of a mediator.

II. PROCEDURAL HISTORY AND ANALYSIS

The procedural calendar for the case started from February 12, 2023, when Plaintiff submitted a Notice of her intention with LWDA to proceed with Labor Code violations under the PAGA against CBH. The Notice communicated an intention by Plaintiff to file a civil lawsuit in

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the State of California pursuant to Labor Code § 2698 *et seq*. and was served upon the LWDA electronically and CBH by certified mail. (Dec. of Lauren E. Grochow ("LG Dec.") ¶ 10.)

On May 22, 2024, Plaintiff submitted an amended notice of his intention with State of California Labor and Workforce Development Agency ("Amended Notice") to proceed with Labor Code violations under the Private Attorney General Act ("PAGA") against both Defendants. The Amended Notice communicated an intention by Plaintiff to file a civil lawsuit in the State of California pursuant to Labor Code § 2698 *et seq*. The Amended Notice was served electronically to the LWDA and electronically to Defendants' counsel, per the Parties agreement. (LG Decl. ¶ 11.)

On June 24, 2024, Plaintiff filed a complaint in Orange County Superior Court, thereby initiating the Action. (LG Decl. ¶ 12.)

The Complaint comprised of the following individual causes of action, which are *not* a part of the PAGA settlement: (1) Retaliation under California Labor Code § 1102.5; (2) Retaliation under California Labor Code § 6310; (3) Discrimination under the Fair Employment Housing Act ("FEHA"); (4) Harassment under the FEHA; (5) Retaliation under the FEHA; (6) Failure To Prevent Discrimination and Harassment under the FEHA; (7) Wrongful Termination; (8) Failure to Provide Meal Periods; (9) Failure to Provide Rest Breaks; (10) Failure to Pay All Wages Earned; (11) Failure to Provide Accurate Itemized Wage Statement; (12) Waiting Time Penalties; (13) Failure to Pay Overtime; (14) Failure to Produce Payroll Records; (15) Failure to Produce Personnel File; (16) Failure to Reimburse Business Expenses; (17) Breach of Contract; (18) Unfair & Unlawful Business Practices; and (19) Declaratory & Injunctive Relief. The twentieth cause of action under the Complaint was Violation of the PAGA and that cause of action is the subject of the settlement. (LG Dec. ¶ 13.)

III. SETTLEMENT AND DISTRIBUTION

On or around January 31, 2025, the parties entered into a PAGA Settlement Agreement ("Settlement Agreement" or "SA"). (LG Dec, Ex. A.) The Settlement Agreement largely models the California Superior Court, County of Los Angeles Model PAGA Settlement Agreement (LASC CIV 298) and has 10 separate sections, addressing, among other terms: Definitions (§ 1);

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Recitals (§ 2); Monetary Terms (§ 3); Settlement Funding and Payments (§ 4); Release of Claims (§ 5); Motion or Application for Approval of Settlement (§ 6); Settlement Administration (§ 7); Aggrieved Employee Size Estimates and Escalator Clause (§ 8); Continuing Jurisdiction of the Court (§ 9); and Additional Provisions (§ 10). The Aggrieved Employee Size is estimated at 209, who worked 2,936 Pay Periods during the PAGA period (SA, § 4.1). (LG Dec. ¶ 14.)

The monetary terms may be summarized as follows: The Parties' settlement allocates $88,080.00 for settlement of the Released PAGA Claims ("Gross Settlement Amount") (LG Dec., Ex. A, SA, § 3.1); the agreed attorneys' fees are up to 33% of the gross recovery or $29,360.00 (*Id.* at § 3.2.1); the incurred litigations costs are $2,390.80; no greater than $5,300.00 is allocated to Atticus Administration, LLC ("Settlement Administrator") (*Id.* at § 3.2.2) pursuant to the administrative bid provided by the Settlement Administrator (LG Dec., Ex. B); and $5,000 as enhancement payment to Plaintiff for representing the PAGA class (LG Dec., Ex. A, SA, § 3.2.4). The Settlement Administrator's qualifications are set forth in a declaration from the administrator. (LG Dec. ¶ 16, Ex. B.)

The above computation will leave a net balance of $38,420.00, from which sum 75% or $28,815.00 will be paid to the State of California (LWDA) and the remaining 25% or $9,635.00 will be distributed to the PAGA class – the Aggrieved Employees – which may translate into an average payout to each member about $46.10. Of course, the Administrator will adjust these figures before making the distributions in accordance with the Court's Order. (LG Dec. ¶ 17.)

Defendants shall fully fund the Gross Settlement Amount within 14 days of the Effective Date, which is the date the Court enters judgment. (LG Dec., § 20, Ex. A, SA § 4.3.) Within 14 calendar days after Defendants fully fund the Gross Settlement Amount, the Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (LG Dec., ¶ 18, Ex. A, SA §§ 3.2.3.1, 4.4.)

Within 20 days after the Administrator receives the Gross Settlement Amount, Defendants will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. (LG Dec. ¶ 19, Ex. A, SA, § 4.2.)

The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. (LG Dec. ¶ 20, Ex. A, SA, § 4.4.1.)

The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date. (LG Dec. ¶ 20, Ex. A, SA, § 4.4.2.)

The Settlement Administrator will compute the pro-rate share of each Aggrieved Employee in accordance with the work week factor set forth above and will mail the respective share of the Aggrieved Employees together with a "Notice of Settlement," explaining in detail and in conformity with the Settlement Agreement, which, *inter alia*, provides notice of the following to each PAGA class member:

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- ➢ What is this notice about?
- ➢ What is this lawsuit about?
- ➢ Who is included in this settlement?
- ➢ What will I receive from the settlement & the release?
- ➢ What are my rights & contact information?

(LG Decl. ¶ 23, Ex. C.)

IV. <u>THE SETTLEMENT IS ADEQUATE, REASONABLE & FAIR</u>

This case addresses violations of important employee protections embodied in the California Labor Code as follows:

a) There were times where Plaintiff and other Aggrieved Employees were suffered and/or permitted to work, but not compensated for that time worked. Defendants failed to pay Plaintiff and other Aggrieved Employees for all hours worked at her minimum wage rate, even though Defendants knew she and other Aggrieved Employees worked those hours in violation of California Labor Code §§ 204, 1194, 1197, and 1197.1. (LG Dec., ¶ 23(a).)

b) When Plaintiff and other Aggrieved Employees worked more than eight hours in a day or forty hours in a week, Defendants failed to compensate her at the requisite overtime rate. Thus, Defendants failed to pay Plaintiff and the other Aggrieved Employees the overtime compensation premium, as required by the applicable Wage Order No. 5-2001 and the California Labor Code, violating the provisions of California Labor Code §§ 510, 512, 1197, 1197.1 and 1198. (LG Dec., ¶ 23(b).)

c) When Plaintiff and other Aggrieved Employees worked a shift of over five hours, there were multiple instances where Plaintiff and other Aggrieved Employees missed a meal period, did not receive a timely meal period, or were interrupted during their meal period, but never received a meal period premium. Thus, Defendants failed to provide Plaintiff and other Aggrieved Employees meal periods or meal period premiums for missed meal periods in violation of California Labor Code §§ 204, 226.7 and 512. (LG Dec., ¶ 23(c).)

d) Where Plaintiff and other aggrieved employees worked at least four hour or major fraction thereof, there were multiple instances where Plaintiff and other Aggrieved

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Employees were not provided an uninterrupted rest break or did not receive a timely rest break, but never received a rest break premium. Thus, Defendants failed to provide Plaintiff and other Aggrieved Employees rest breaks or rest break premiums for missed rest breaks in violation of California Labor Code §§ 226.7 and 1198. (LG Dec., ¶ 23(d).)

e) Plaintiff and other Aggrieved Employees sometimes worked more than seven days in a row without a rest day. Thus, Defendants failed to provide Plaintiff and other Aggrieved Employees rest days in violation of California Labor Code §§ 551 and 552. (LG Dec., ¶ 23(e).)

f) Plaintiff and other Aggrieved Employees were never provided any paid sick days. Thus, Defendants failed to provide Plaintiff and other Aggrieved Employees with paid sick leave or supplemental paid sick leave, violating Labor Code §§ 245-248.5, 233-234, 248.2, and 248.6. (LG Dec., ¶ 23(f).)

g) While Plaintiff and other Aggrieved Employees were furnished with some of the instruments they needed for their employment, Plaintiff and other Aggrieved Employees had to make business expenses to buy other equipment necessary for their role. Because Defendants failed to indemnify Plaintiff and other Aggrieved Employees for these necessary expenditures incurred as a direct consequence of their discharge of their duties with CBH, Defendants violated Labor Code §§ 2800 and 2802. (LG Dec., ¶ 23(g).)

In addition to the factors presented above, the proposed Settlement does not possess any obvious deficiencies. The Settlement contemplates entry of an order (submitted concurrently herewith) which approves the Settlement and dismisses the PAGA Claim with prejudice. (LG Dec. ¶ 25.)

PAGA settlement of $88,080.00 is more than fair, reasonable, and adequate settlement due to the above-described circumstance, especially considering the strong possibility there would be no recovery without this settlement. Even if Plaintiff was to prevail on the underlying claim, she would face the potential of discretionary reduction of maximum penalties by the Court and reported cases. (LG Dec. ¶¶ 24-25.)

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V. ATTORNEYS' FEES ARE REASONABLE

Grochow Law, APC ("GL") is the PAGA counsel, and seeks a fee award calculated as a percentage of the total value of the settlement for successful prosecution and resolution of all existing claims. Since early February 2024, two attorneys from GL have worked on this matter for the past 12 months, with a lodestar of over 40 hours for attorney Lauren E. Grochow (12 + years as a practicing attorney in the state of California with an hourly rate of $795.00) and over 20 hours for attorney Daniel M. Kalinowski (10 + years of practicing attorney in the State of California with an hourly rate of $650.00). These are reduced rates to those of the Laffey Matrix (for attorneys of like experience and years of practice in the Los Angeles County). The represented working hours include the time spent with client, preparation of the file, drafting and filing of the complaint, amending and filing Complaints, meet and confer between counsel, submittal of PAGA letter and amendment thereto, follow up with client regarding status, review and analysis of the produced data, communications re follow up production, settlement negotiations, preparation and participation at mediation, drafting settlement papers, review of the terms with the client, as well as preparation of the approval papers. (LG Dec. ¶ 26.)

Both California State and Federal Courts have recognized that an appropriate method in determining an attorney fee award may be based on the percentage on the total value of the benefits conferred by the settlement. *Serrano v. Priest* (1997) 20 Cal. 3d 25, 34 [*Serrano III*]; *Boeing Company v. Van Gemert* (1980) 344 U.S. 472, 478; *Vincent v. Hughes Airwest, Inc*. (9th Cir. 1977) 557 F.2d 759, 769. (LG Dec. ¶ 27.)

The California Supreme Court endorsed a fee award as a percentage of the common Fund. The Court clarified "that when an attorney fee is awarded out of a common fund preserved or recovered by means of litigation (internal citation omitted), the award is not per se unreasonable merely because it is calculated as a percentage of the common fund." *Laffitte v. Robert Half Int'l. Inc.* (2016) 1 Cal. 5th 480, 486. Also "[t]hat the recognized advantages of the percentage method…convince us that the percentage method is a valuable tool that should not be denied in our trial courts." *Id*. at 503. (LG Dec. ¶ 28.)

The Common Fund Doctrine is predicated on the principle of preventing unjust enrichment. When a litigant's efforts create or preserve, or generate a fund from which others derive benefits, he may require the passive beneficiaries to compensate those who created the fund. Both California State and Federal Courts have embraced this Doctrine. *Serrano III, supra*, at 35; *Vincent, supra*, at 769. Since *Serrano III, supra*, there has been a ground swell of support for mandating the percentage of the fund approach in common fund cases. Both State and Federal Court have found the percentage approach preferable to the Lodestar because; (1) it aligns the interest of counsel and absent parties (PAGA Counsel and the LWDA here); (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demand on judicial resources. *In re Activision Sec. Litig.* (N.D. Cal. 1989) 723 F Supp. at 1378-79. (LG Dec. ¶ 29.)

In accordance, therefore, the PAGA settlement is fair, adequate, and reasonable, as are PAGA Counsel's fees and costs, and request the Court enter Order in accordance.

VI. <u>CONCLUSION</u>

Considering the foregoing and other evidence which may be presented during the hearing as called upon by the Court, Plaintiff submits that the PAGA settlement is fair, adequate, and reasonable and so are the requested distributions. Thus, Order approving the settlement and distributions is respectfully requested.

Dated: February 18, 2025 GROCHOW LAW, A PROFESSIONAL CORP

By: ______________________________
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Daniel M. Kalinowski
Attorneys for Plaintiff Joan S. Walter